

1 HOUSE BILL NO. 138

2 INTRODUCED BY R. JOHNSON

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE YOUTH COURT ACT; REPLACING
6 THE CATEGORY OF "YOUTH IN NEED OF SUPERVISION" WITH "YOUTH IN NEED OF INTERVENTION";
7 INCLUDING SCHOOLS UNDER CONFIDENTIALITY DISCLOSURE EXCEPTIONS FOR DEPARTMENT OF
8 PUBLIC HEALTH AND HUMAN SERVICES RECORDS; CREATING YOUTH ASSESSMENT PLACEMENTS,
9 FAMILY ASSESSMENTS, AND ASSESSMENT OFFICERS TO EVALUATE THE STRENGTHS AND NEEDS OF
10 A YOUTH AND THE FAMILY OF A YOUTH BROUGHT TO THE ATTENTION OF YOUTH COURT; REQUIRING
11 THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO LICENSE YOUTH ASSESSMENT
12 PLACEMENTS; REDEFINING "DELINQUENT YOUTH"; DEFINING "HABITUAL TRUANCY", "YOUTH IN NEED
13 OF INTERVENTION", "VICTIM", AND OTHER TERMS; ALLOWING SHORT-TERM DETENTION FOR UP TO
14 10 WORKING DAYS; ALLOWING THE APPOINTMENT OF JUDGES PRO TEMPORE OR SPECIAL MASTERS
15 FOR YOUTH COURT PRELIMINARY MATTERS; ALLOWING A COUNTY ATTORNEY TO MAKE A MOTION
16 FOR LEAVE TO FILE AN INFORMATION DIRECTLY IN DISTRICT COURT FOR CERTAIN YOUTH OFFENSES;
17 ADDING ACCOUNTABILITY AS AN OFFENSE THAT CAN BE FILED IN DISTRICT COURT; CLARIFYING DUE
18 PROCESS RIGHTS IN THE TRANSFER OF CASES TO DISTRICT COURT AFTER PROSECUTION; ADDING
19 ASSESSMENT PLACEMENTS FOR PLACEMENTS BEFORE ADJUDICATION AND FOR DISPOSITION;
20 PROVIDING CRITERIA FOR PLACEMENT IN AN ASSESSMENT; PROVIDING THE TYPES OF PLACEMENTS
21 ALLOWED FOR ASSESSMENT; GENERALLY REORGANIZING DISPOSITION STATUTES; LIMITING THE USE
22 OF AN INFORMAL CONSENT ADJUSTMENT AND A CONSENT DECREE TO A SINGLE FELONY EACH;
23 PROVIDING GRADUATED SANCTIONS; PROVIDING ADDITIONAL SANCTIONS; ADDING PROVISIONS
24 THAT PARENTS AND GUARDIANS MAY BE HELD RESPONSIBLE FOR CONTRIBUTING TO THE COSTS OF
25 ADJUDICATION, DISPOSITION, SUPERVISION, AND MEDICAL COSTS OR VICTIM'S COUNSELING AND
26 DAMAGES; ALLOWING DETENTION FOR UP TO 3 DAYS FOR AN INFORMAL CONSENT ADJUSTMENT;
27 PROVIDING THAT PERSONS BE ADVISED OF OBLIGATIONS UNDER THE ACT; ALLOWING DETENTION
28 FOR A CONSENT DECREE FOR UP TO 10 DAYS; REQUIRING THAT A YOUTH MUST ADMIT GUILT FOR
29 CHARGES OF AN OFFENSE IN ORDER FOR A CASE TO BE DISPOSED OF BY A CONSENT DECREE;
30 ADDING A PROVISION THAT SCHOOL REPRESENTATIVES ON YOUTH PLACEMENT COMMITTEES AND

1 AUXILIARY TEAMS BE PERSONS WITH PERSONAL KNOWLEDGE OF THE CHILD; REPLACING AFTERCARE
 2 AGREEMENTS WITH JUVENILE PAROLE AGREEMENTS; AMENDING SECTIONS 7-6-501, 20-5-321,
 3 20-7-422, 23-5-158, 41-3-205, 41-3-1101, 41-3-1102, 41-3-1103, 41-3-1114, 41-3-1122, 41-3-1132,
 4 41-5-103, 41-5-201, 41-5-203, 41-5-204, 41-5-205, 41-5-206, 41-5-301, 41-5-303, 41-5-304, 41-5-305,
 5 41-5-306, 41-5-401, 41-5-403, 41-5-501, 41-5-511, 41-5-515, 41-5-521, 41-5-522, 41-5-523, 41-5-524,
 6 41-5-525, 41-5-530, 41-5-533, 41-5-603, 41-5-605, 41-5-802, 41-5-1004, 41-5-1008, 41-5-1104,
 7 41-5-1105, 45-5-624, 45-5-637, 46-18-256, 46-24-207, 52-2-211, 52-5-101, 52-5-107, 52-5-113,
 8 52-5-126, 52-5-127, 52-5-128, 52-5-129, 53-1-201, AND 53-1-203, MCA; REPEALING SECTION
 9 41-5-310, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

10

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

12

13 **Section 1.** Section 7-6-501, MCA, is amended to read:

14 **"7-6-501. Definitions.** As used in 7-6-502 and this section, unless the context requires otherwise,
 15 the following definitions apply:

16 (1) "Detention" means the holding or temporary placement of a youth in a facility other than the
 17 youth's own home for the purpose of ensuring the continued custody of the youth at any time after the
 18 youth is taken into custody and before final disposition of ~~the~~ the youth's case.

19 (2) "Juvenile detention program" means services to provide for the lawful detention or shelter care
 20 of youth. The term includes:

21 (a) youth evaluations ordered by the court under 41-5-523; and

22 (b) programs for the transportation of youth to appropriate detention facilities or shelter care
 23 facilities.

24 (3) "Local government" has the same meaning as provided in 7-12-1103.

25 (4) "Shelter care" has the same meaning as provided in 41-5-103.

26 (5) "Youth" means an individual who is less than 18 years of age who is alleged to be a delinquent
 27 youth or youth in need of ~~supervision~~ intervention as those terms are defined in 41-5-103."

28

29 **Section 2.** Section 20-5-321, MCA, is amended to read:

30 **"20-5-321. Attendance with mandatory approval -- tuition and transportation.** (1) An out-of-district

1 attendance agreement that allows a child to enroll in and attend a school in a Montana school district that
2 is outside of the child's district of residence or in a public school district of a state or province that is
3 adjacent to the county of the child's residence is mandatory whenever:

4 (a) the child resides closer to the school that the child wishes to attend and more than 3 miles from
5 the school the child would attend in the resident district and:

6 (i) the resident district does not provide transportation; or

7 (ii) the district of residence provides transportation and is not within the same county as the child's
8 school district of choice;

9 (b) the child resides in a location where, due to road or geographic conditions, it is impractical to
10 attend the school nearest the child's residence;

11 (c) the child is a member of a family that is required to send another child outside of the elementary
12 district to attend high school and the child of elementary age may more conveniently attend an elementary
13 school where the high school is located, provided that the child resides more than 3 miles from an
14 elementary school in the resident district or that the parent is required to move to the elementary district
15 where the high school is located to enroll another child in high school;

16 (d) the child has been adjudicated by a court of competent jurisdiction to be an abused or neglected
17 child, as defined in 41-3-102, or a youth in need of ~~supervision~~ intervention or a delinquent youth, as
18 defined in 41-5-103, and has been placed in a licensed youth care facility that is approved by the
19 department of public health and human services and, as a result of the placement, is required to attend
20 school outside of the child's district of residence; or

21 (e) the child is required to attend school outside of the district of residence as the result of a
22 placement by a state agency or parent in a group home licensed by the state or an order of a court of
23 competent jurisdiction.

24 (2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have
25 a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall
26 complete an out-of-district attendance agreement in consultation with an appropriate official of the district
27 the child will attend.

28 (b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for
29 tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

30 (c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver

1 must be applied equally to all students.

2 (3) Except as provided in subsection (4), the trustees of the resident district and the trustees of
3 the district of choice shall approve the out-of-district attendance agreement and notify the county
4 superintendent of schools of the county of the child's residence of the approval of the agreement within
5 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

6 (4) Unless the child is a child with disabilities who resides in the district, the trustees of the district
7 where the school to be attended is located may disapprove an out-of-district attendance agreement
8 whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would
9 be adversely affected by the acceptance of the child."

10
11 **Section 3.** Section 20-7-422, MCA, is amended to read:

12 **"20-7-422. Out-of-state placement of children with disabilities -- payment of costs.** (1) In
13 accordance with a placement made by persons determining an individualized education program for a child
14 with disabilities, the trustees of a district may arrange for the attendance of the child in a special education
15 program offered outside of the state of Montana.

16 (2) Except as provided in subsection (3), when the persons determining the individualized education
17 program of a child with disabilities who is in need of special education recommend placement in an
18 out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount
19 and manner of payment of all costs associated with the placement.

20 (3) Whenever a child with disabilities who is in need of special education and related services is
21 adjudicated by a court of competent jurisdiction to be an abused or neglected child, as defined in 41-3-102,
22 or a youth in need of ~~supervision~~ intervention or delinquent youth, as defined in 41-5-103, and is placed
23 by a state agency in an out-of-state private residential facility, the superintendent of public instruction shall
24 negotiate with:

25 (a) the provider for the amount and manner of payment of education fees consistent with the
26 individualized education program determined for the child under the provisions of 20-7-402; and

27 (b) the state agency that makes the placement for the portion of the placement costs that
28 represents the child's education program.

29 (4) Payments for a child with disabilities as negotiated in subsection (3) must be paid by the
30 superintendent of public instruction from the state special education appropriation."

1 **Section 4.** Section 23-5-158, MCA, is amended to read:

2 **"23-5-158. Minors not to participate -- penalty -- exception.** (1) Except as provided in subsection
3 (3), a person may not purposely or knowingly allow a person under 18 years of age to participate in a
4 gambling activity. A person who violates this subsection is guilty of a misdemeanor and must be punished
5 in accordance with 23-5-161.

6 (2) Except as provided in subsection (3), a person under 18 years of age may not purposely or
7 knowingly participate in a gambling activity. A person who violates this subsection is subject to a civil
8 penalty not to exceed \$50 if the proceedings for violating this subsection are held in justice's, municipal,
9 or city court. If the proceedings are held in youth court, the offender must be treated as an alleged youth
10 in need of ~~supervision~~ intervention, as defined in 41-5-103. The youth court may enter its judgment under
11 41-5-523.

12 (3) A person under 18 years of age may sell or buy tickets for or receive prizes from a raffle
13 conducted in compliance with 23-5-413 if proceeds from the raffle, minus administrative expenses and
14 prizes paid, are used to support charitable activities, scholarships or educational grants, or community
15 service projects."
16

17 **Section 5.** Section 41-3-205, MCA, is amended to read:

18 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of
19 public health and human services and its local affiliate, the county welfare department, the county attorney,
20 and the court concerning actions taken under this chapter and all records concerning reports of child abuse
21 and neglect must be kept confidential except as provided by this section. Except as provided in subsections
22 (4) and (5), a person who permits or encourages the unauthorized dissemination of the contents of case
23 records is guilty of a misdemeanor.

24 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it.
25 The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an
26 issue before it.

27 (3) Records may also be disclosed to the following persons or entities in this state and any other
28 state or country:

29 (a) a department, agency, or organization, including a federal agency, military enclave, or Indian
30 tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or

1 neglect and that otherwise meets the disclosure criteria contained in this section;

2 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the
3 family or child who is the subject of a report in the records;

4 (c) a health or mental health professional who is treating the family or child who is the subject of
5 a report in the records;

6 (d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject
7 of a report in the records or other person responsible for the child's welfare, without disclosure of the
8 identity of any person who reported or provided information on the alleged child abuse or neglect incident
9 contained in the records;

10 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian
11 or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed
12 by the court to represent a child in a pending case;

13 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

14 (g) approved foster and adoptive parents who are or will be providing care for a child;

15 (h) a person about whom a report has been made and that person's attorney, with respect to the
16 relevant records pertaining to that person only and without disclosing the identity of the reporter or any
17 other person whose safety may be endangered;

18 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision
19 of an alleged perpetrator of child abuse or neglect;

20 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project
21 and that is authorized by the department to conduct the research or evaluation;

22 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 for the
23 purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the
24 plan;

25 (l) the coroner or medical examiner when determining the cause of death of a child;

26 (m) a child fatality review team recognized by the department;

27 (n) a department or agency investigating an applicant for a license or registration that is required
28 to operate a youth care facility, day-care facility, or child-placing agency;

29 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
30 screening of current or prospective employees or volunteers who have or may have unsupervised contact

1 with children through employment or volunteer activities. A request for information under this subsection
2 (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that
3 indicates a risk to children posed by the person about whom the information is sought, as determined by
4 the department.

5 (p) the news media if disclosure is limited to confirmation of factual information regarding how the
6 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or
7 guardian as determined by the department;

8 (q) an employee of the department or other state agency if disclosure of the records is necessary
9 for administration of programs designed to benefit the child;

10 (r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is
11 necessary to meet requirements of the federal Indian Child Welfare Act;

12 (s) a youth probation officer who is working in an official capacity with the child who is the subject
13 of a report in the records;

14 (t) a county attorney, peace officer, or attorney who is hired by or represents the department, if
15 disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or
16 neglect;

17 (u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen
18 review board established under Title 41, chapter 3, part 10;

19 (v) a school employee participating in an interview of a child by a social worker, county attorney,
20 or peace officer as provided in 41-3-202;

21 (w) a member of a county interdisciplinary child information team formed under the provisions of
22 52-2-211;

23 (x) members of a local interagency staffing group provided for in 52-2-203; ~~or~~

24 (y) a member of a youth placement committee formed under the provisions of 41-5-525; or

25 (z) a principal of a school or a school employee who is working with a student who is a common
26 client of the department.

27 (4) A person who is authorized to receive records under this section shall maintain the
28 confidentiality of the records and may not disclose information in the records to anyone other than the
29 persons described in subsection (3)(a). However, this subsection may not be construed to compel a family
30 member to keep the proceedings confidential.

1 (5) A news organization or its employee, including a freelance writer or reporter, is not liable for
2 reporting facts or statements made by an immediate family member under subsection (4) if the news
3 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of
4 the proceeding.

5 (6) This section is not intended to affect the confidentiality of criminal court records or records of
6 law enforcement agencies."
7

8 **Section 6.** Section 41-3-1101, MCA, is amended to read:

9 **"41-3-1101. Establishment of substitute care for youth.** The legislature, in recognition of the wide
10 and varied needs of youth in need of care, delinquent youth, and youth in need of ~~supervision~~ intervention
11 of this state and of the desirability of meeting these needs on a community level to the fullest extent
12 possible, establishes by this part a system of substitute care to provide facilities and services for youth
13 placed out of their homes and establishes a program to provide those facilities and services through local
14 nonprofit corporations, counties, and the department of public health and human services."
15

16 **Section 7.** Section 41-3-1102, MCA, is amended to read:

17 **"41-3-1102. Definitions.** For the purposes of this part, the following definitions apply:

18 (1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or
19 more children or youth.

20 (2) "Department" means the department of public health and human services provided for in
21 2-15-2201.

22 (3) "Foster child" means a person under 18 years of age who has been placed by the department
23 in a licensed youth foster home.

24 (4) "Operator of a youth care facility" means a person owning or operating a youth care facility
25 into which the operator takes any child or children for the purpose of caring for them and maintaining them
26 and for which care and maintenance the operator receives money or other consideration of value and which
27 child is ~~neither~~ not the operator's son, daughter, ~~nor~~ or ward, except that this part does not apply when
28 any person accepts the care and custody of a child on a temporary basis and simply as a temporary
29 accommodation for the parent or parents, guardian, or relative of the child.

30 (5) "Person" means any individual, partnership, voluntary association, or corporation.

1 (6) "Respite care" means the provision of temporary, short-term supervision or care of a foster
 2 child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care
 3 requirements of a foster child whose mental or physical condition requires special or intensive supervision
 4 or care. Respite care includes but is not limited to homemaker services, child care, and emergency care
 5 either in the home or out of the home.

6 (7) "Respite care provider" means a person who meets the qualifications and requirements
 7 established by the department to provide respite care under 41-3-1151.

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

11 (9) "Youth assessment placement" has the meaning provided in 41-5-103.

12 ~~(9)~~(10) "Youth care facility" means a facility that is licensed by the department or by the
 13 appropriate licensing authority in another state and in which facility substitute care is provided to youth.
 14 The term includes youth foster homes, youth group homes, ~~and~~ child-care agencies, and youth assessment
 15 placements.

16 ~~(10)~~(11) "Youth foster home" means a youth care facility in which substitute care is provided to
 17 one to six children or youth other than the foster parents' own children, stepchildren, or wards.

18 ~~(11)~~(12) "Youth group home" means a youth care facility in which substitute care is provided to
 19 7 to 12 children or youth."
 20

21 **Section 8.** Section 41-3-1103, MCA, is amended to read:

22 **"41-3-1103. Powers and duties of department.** (1) The department shall:

23 (a) administer all state and federal funds allocated to the department for youth foster homes, youth
 24 group homes, ~~and~~ child-care agencies, and youth assessment placements for youth in need of care, as
 25 defined in ~~41-5-103~~ 41-3-102;

26 (b) exercise licensing authority over all youth foster homes, youth group homes, ~~and~~ child-care
 27 agencies, and youth assessment placements;

28 (c) collect and disseminate information relating to youth in need of care;

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

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

1 care facilities;

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

4 (i) the number of youth in need of care in out-of-home care facilities;

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

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

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

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

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

12 (2) The department may:

13 (a) enter into contracts with nonprofit corporations or associations or private organizations to
14 provide substitute care for youth in need of care in youth care facilities;

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

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

18 (3) The department shall pay for room, board, clothing, personal needs, transportation, and
19 treatment in youth foster care homes and youth group homes for youths committed to the department who
20 need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must
21 be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under
22 this subsection may not exceed appropriations for the purposes of this subsection."
23

24 **Section 9.** Section 41-3-1114, MCA, is amended to read:

25 **"41-3-1114. Continuing jurisdiction of youth court.** The youth court committing a delinquent youth
26 or a youth in need of ~~supervision~~ intervention to the department of corrections retains continuing
27 jurisdiction over the youth until the youth becomes 21 years of age or is otherwise discharged by the
28 department after notice to the youth court of original jurisdiction."
29

30 **Section 10.** Section 41-3-1122, MCA, is amended to read:

1 **"41-3-1122. Payment for support of youth in need of care, youth in need of ~~supervision~~**
 2 **intervention, or delinquent youth -- reimbursement by county.** (1) Whenever a youth who is a youth in need
 3 of care, a youth in need of ~~supervision~~ intervention, or a delinquent youth is placed by the department of
 4 public health and human services or the department of corrections in a youth care facility, the department
 5 making the placement shall pay, within the limits of the appropriation for that purpose, a foster care
 6 payment to the youth care facility at a rate established by the department of public health and human
 7 services for the youth's board, clothing, personal needs, treatment, and room ~~of the youth~~.

8 (2) On or before the 20th of each month, the department of public health and human services or
 9 the department of corrections shall present a claim to the county of residence of the youth for no more than
 10 one-half of the nonfederal share of the payments made during the month. The county shall make
 11 reimbursement to the department within 20 days after the claim is presented.

12 (3) Except as provided in subsection (4), when a county's level of expenditure for any year reaches
 13 the level of reimbursement for foster care in fiscal year 1987, the county has no further obligation for foster
 14 care expenditures.

15 (4) If a county's level of expenditure for foster care in fiscal year 1987 ~~is~~ was \$10,000 or less, the
 16 county's level of expenditure for purposes of determining the county's reimbursement specified in
 17 subsection (3) is the level of expenditures for fiscal year 1987 or the average of expenditures for fiscal
 18 years 1984 through 1987, whichever is less.

19 (5) A county that was state-assumed prior to 1987, but that at a later date reassumes
 20 responsibility pursuant to 53-2-811, is responsible for reimbursement of foster care expenditures up to the
 21 county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed.

22 (6) The department shall conduct or arrange for the review required under 41-3-1115, or when
 23 applicable, 41-3-1010 of a youth placed in a youth care facility if the youth is placed by the department."
 24

25 **Section 11.** Section 41-3-1132, MCA, is amended to read:

26 **"41-3-1132. Governmental contracts with nonprofit organizations.** (1) The department of public
 27 health and human services and the department of corrections may contract with nonprofit corporations or
 28 associations to provide facilities and services for youth in need of care, youth in need of ~~supervision~~
 29 intervention, and delinquent youth in youth care facilities and are authorized to expend money that is
 30 appropriated or available for those purposes. The contracts must be based on the following considerations:

- 1 (a) budgets submitted by the nonprofit corporation or association identifying fixed and variable
 2 costs;
- 3 (b) reasonable costs of service;
- 4 (c) appropriation level; and
- 5 (d) availability of funds.
- 6 (2) Governmental units, including but not limited to counties, municipalities, school districts, or
 7 state institutions of higher learning, are authorized, ~~at their own expense,~~ to provide funds, materials,
 8 facilities, and services for community-based services at their own expense."

9

10 **Section 12.** Section 41-5-103, MCA, is amended to read:

11 **"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires
 12 otherwise, the following definitions apply:

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

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

16 (3) "Assessment officer" means a person who is authorized by the court to provide initial intake
 17 and evaluation for a youth who appears to be in need of intervention as indicated by:

18 (a) the committing of an offense that would not be a criminal offense if committed by an adult; and

19 (b) referral of a parent or guardian, a school representative, a law enforcement officer, or a juvenile
 20 probation officer.

21 (4) "Chronic misdemeanor juvenile offender" means a youth who:

22 (a) has committed at least three offenses within the preceding 12 months that would have been
 23 misdemeanors if committed by an adult; and

24 (b) the court finds has engaged in a pattern of criminal behavior that requires protection of the
 25 public from the youth.

26 ~~(3)~~(5) "Commit" means to transfer to legal custody.

27 ~~(4)~~(6) "Correctional facility" means a public or private residential facility used for the placement
 28 of delinquent youth or individuals convicted of criminal offenses.

29 ~~(5)~~(7) "Court", when used without further qualification, means the youth court of the district court.

30 ~~(6)~~(8) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the

1 youth has been given but does not include a person who has only physical custody.

2 ~~(7)~~(9) "Delinquent youth" means a youth:

3 ~~(a) who has committed an offense that, if committed by an adult, would constitute a criminal~~
4 ~~offense~~ who is adjudicated under formal proceedings under the Montana Youth Court Act as a:

5 (a) felony juvenile offender; 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 probation~~ chronic misdemeanor juvenile offender.

8 ~~(8)~~(10) "Department" means the department of corrections provided for in 2-15-2301.

9 ~~(9)~~(11) "Detention" means the holding or temporary placement of a youth in the youth's home
10 under home arrest or in a facility other than the youth's own home for:

11 (a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken
12 into custody and before final disposition of the youth's case; or

13 (b) contempt of court or violation of a valid court order.

14 ~~(10)~~(12) "Detention facility" means a physically restricting facility designed to prevent a youth from
15 departing at will. The term includes a youth detention facility, short-term detention center, and regional
16 detention facility.

17 (13) "Family" means the parents, guardians, legal custodians, and siblings or other youth with
18 whom a youth ordinarily lives.

19 (14) "Family assessment" means an evaluation and assessment of a youth's and a youth's family's
20 strengths and needs as determined through a multidisciplinary evaluation, including but not limited to a
21 chemical dependency evaluation, an education assessment, a mental health evaluation using the public
22 mental health program, family-based services, and other services provided by the department of public
23 health and human services or other state and local agencies.

24 ~~(11)~~(15) "Final disposition" means the implementation of a court order for the disposition or
25 placement of a youth as provided in 41-5-523 and [sections 32 through 39].

26 ~~(12)~~(16) "Foster home" means a private residence licensed by the department of public health and
27 human services for placement of a youth.

28 ~~(13)~~(17) "Guardianship" ~~means the status created and defined by law between a youth and an adult~~
29 ~~with the reciprocal rights, duties, and responsibilities.~~ "Guardian" means an adult:

30 (a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with

1 the youth; and

2 (b) whose status is created and defined by law.

3 (18) "Habitual truancy" means recorded absences of:

4 (a) 7 days or more in a semester for a student from grades 1 through 8; or

5 (b) 7 periods or more in a week for a student from grades 9 through 12.

6 ~~(14)~~(19) "Holdover" means a room, office, building, or other place approved by the board of crime
7 control for the temporary detention and supervision of youth in a physically unrestricting setting for a period
8 not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an
9 appropriate detention or shelter care facility. The term does not include a jail.

10 ~~(15)~~(20) "Jail" means a facility used for the confinement of adults accused or convicted of criminal
11 offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults
12 after arrest.

13 ~~(16)~~(21) "Judge", when used without further qualification, means the judge of the youth court.

14 ~~(17)~~(22) (a) "Legal custody" means the legal status created by order of a court of competent
15 jurisdiction that gives a person the right and duty to:

16 (i) have physical custody of the youth;

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

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

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

20 (b) An individual granted legal custody of a youth shall personally exercise the individual's rights
21 and duties as guardian unless otherwise authorized by the court entering the order.

22 (23) "Mentally ill" means suffering from a mental disorder that has not resulted in self-inflicted injury
23 or injury to others or the imminent threat of injury but that:

24 (a) has resulted in behavior that creates serious difficulty in protecting the person's life or health
25 even with the available assistance of family, friends, or others;

26 (b) is treatable, with a reasonable prospect of success;

27 (c) has deprived the person of the capacity to make an informed decision concerning treatment;

28 (d) has resulted in the person's refusing or being unable to consent to voluntary admission for
29 treatment; and

30 (e) poses a significant risk of the person's becoming seriously mentally ill or will, if untreated,

1 predictably result in further serious deterioration in the mental condition of the person. Predictability may
 2 be established by the patient's medical history.

3 ~~(18)~~(24) "Necessary parties" includes the youth, and the youth's parents, guardian, custodian, or
 4 spouse.

5 ~~(19)~~(25) "Parent" means the natural or adoptive parent but does not include a person whose
 6 parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth
 7 unless the putative father's paternity is established by an adjudication or by other clear and convincing
 8 proof.

9 ~~(20)~~(26) "Probable cause hearing" means the hearing provided for in 41-5-303.

10 ~~(21)~~(27) "Regional detention facility" means a youth detention facility established and maintained
 11 by two or more counties, as authorized in 41-5-811.

12 ~~(22)~~(28) "Restitution" means payments in cash to the victim or with services to the victim or the
 13 general community when these payments are made pursuant to an informal adjustment, consent decree,
 14 or other youth court order.

15 ~~(23)~~(29) "Secure detention facility" means ~~any~~ a public or private facility that:

16 (a) is used;

17 (i) for the temporary placement of youth or individuals accused or convicted of criminal offenses;

18 (ii) as a sanction for contempt of court or violation of a valid court order; or

19 (iii) as a sanction for youth who are in violation of a juvenile parole agreement; and

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

22 ~~(24)~~(30) "Serious juvenile offender" means a youth who has committed an offense that would be
 23 considered a felony offense if committed by an adult and that is an offense against a person, an offense
 24 against property, or an offense involving dangerous drugs.

25 ~~(25)~~(31) "Shelter care" means the temporary substitute care of youth in physically unrestricting
 26 facilities.

27 ~~(26)~~(32) "Shelter care facility" means a facility used for the shelter care of youth. The term is
 28 limited to the facilities enumerated in 41-5-306(1)(a).

29 ~~(27)~~(33) "Short-term detention center" means a detention facility licensed by the department for
 30 the temporary placement or care of youth, for a period not to exceed ~~96 hours~~ 10 days, including

1 weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an
 2 appropriate detention facility, youth assessment placement, or shelter care facility.

3 ~~(28)~~(34) "State youth correctional facility" means a residential facility used for the placement and
 4 rehabilitation of delinquent youth, ~~such as the Pine Hills school in Miles City and the Mountain View school~~
 5 ~~in Helena.~~

6 ~~(29)~~(35) "Substitute care" means full-time care of youth in a residential setting for the purpose of
 7 providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who
 8 are removed from or are without the care and supervision of their parents or ~~guardian~~ guardians.

9 (36) "Victim" has the meaning given in 46-18-243.

10 ~~(30)~~(37)(a) "Youth" means an individual who is less than 18 years of age without regard to sex or
 11 emancipation.

12 (b) The term does not include a person under 18 years of age who has been transferred to district
 13 court pursuant to 41-5-206 or 41-5-208.

14 (38) "Youth assessment placement" means a staff-secured location licensed by the department of
 15 public health and human services in which a youth may be held for up to 10 days to ascertain a youth's
 16 and a youth's family's strengths and needs, including but not limited to an evaluation of mental health,
 17 chemical dependency, and abuse and neglect.

18 (39) "Youth care facility" has the meaning provided in 41-3-1102.

19 ~~(34)~~(40) "Youth court" means the court established pursuant to this chapter to hear all proceedings
 20 in which a youth is alleged to be a delinquent youth, a youth in need of ~~supervision~~ intervention, or a youth
 21 in need of care and includes the youth court judge and probation officers.

22 ~~(32)~~(41) "Youth detention facility" means a secure detention facility licensed by the department for
 23 the temporary substitute care of youth that:

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

25 (b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a
 26 sanction for contempt of court or violation of a valid court order.

27 ~~(33)~~(42) "Youth in need of care" has the meaning provided for in 41-3-102.

28 ~~(34)~~(43) "Youth in need of ~~supervision~~ intervention" means a youth who is adjudicated as a youth
 29 and who commits an offense prohibited by law that, if committed by an adult, would not constitute a
 30 criminal offense, including but not limited to a youth who:

1 (a) violates any Montana municipal or state law regarding ~~use of~~ alcoholic beverages, tobacco
2 products, or gambling by minors;

3 (b) continues to exhibit behavior, including running away from home or habitual truancy, beyond
4 the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of
5 the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to
6 mediate, resolve, or control the youth's behavior; ~~or~~

7 (c) has committed offenses that would be misdemeanors if committed by an adult, but who has not
8 been determined to be a chronic misdemeanor offender; or

9 ~~(d)~~ has committed any of the acts of a delinquent youth but whom the youth court, in its
10 discretion, chooses to regard as a youth in need of supervision intervention."

11
12 **Section 13.** Section 41-5-201, MCA, is amended to read:

13 **"41-5-201. Youth court judge -- judges pro tempore -- special masters.** (1) Each judicial district
14 in the state ~~shall~~ must have at least one judge of the youth court. ~~His~~ whose duties ~~shall be~~ are to:

15 (a) appoint and supervise qualified personnel to staff the youth division probation departments
16 within the judicial district;

17 (b) conduct hearings on youth court proceedings under this chapter;

18 (c) perform any other functions consistent with the legislative purpose of this chapter.

19 (2) In each multijudge judicial district the judges shall, by court rule, designate one or more of their
20 number to act as youth court judge in each county in the judicial district for a fixed period of time. Service
21 as youth court judge may be rotated among the different judges of the judicial district and among the
22 individual counties within the judicial district for given periods of time. Continuity of service of a given judge
23 as youth court judge and continuity in the operation and policies of the youth court in the county having
24 the largest population in the judicial district ~~shall~~ must be the principal consideration of the rule.

25 (3) (a) A youth court judge may appoint a judge pro tempore or a special master to conduct
26 preliminary, nondispositive matters, including but not limited to hearings for probable cause or detention
27 and taking of responses for petitions.

28 (b) A judge pro tempore or special master must be a member of the state bar of Montana."
29

30 **Section 14.** Section 41-5-203, MCA, is amended to read:

1 **"41-5-203. Jurisdiction of the court.** (1) Except as provided in subsection (2) and for cases filed
 2 in the district court under 41-5-206, the court has exclusive original jurisdiction of all proceedings under
 3 the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of
 4 ~~supervision~~ intervention, or a youth in need of care or concerning any person under 21 years of age
 5 charged with having violated any law of the state or any ordinance of ~~any a~~ city or town other than a traffic
 6 or fish and game law prior to having become 18 years of age.

7 (2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all
 8 alcoholic beverage, tobacco products, and gambling violations alleged to have been committed by a youth."
 9

10 **Section 15.** Section 41-5-204, MCA, is amended to read:

11 **"41-5-204. Venue and transfer.** (1) The county where a youth is a resident or is alleged to have
 12 violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. ~~The~~ Except as
 13 provided in 41-5-206, the youth court shall assume the initial handling of the case.

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

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

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

25 (4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses
 26 listed in 41-5-206, ~~the court in the county where the offense occurred shall serve as a transfer hearing~~
 27 ~~court, and if the youth~~ and who is to be tried in district court, the charge ~~shall~~ must be filed and trial held
 28 in the district court of the county where the offense occurred."
 29

30 **Section 16.** Section 41-5-205, MCA, is amended to read:

1 **"41-5-205. Retention of jurisdiction -- termination.** ~~One~~ Except for cases filed in the district court
 2 under 41-5-206, once a court obtains jurisdiction over a youth, the court retains jurisdiction unless
 3 terminated by the court or by mandatory termination in the following cases:

- 4 (1) at the time the proceedings are transferred to adult criminal court;
 5 (2) at the time the youth is discharged by the department; and
 6 (3) in any event, at the time the youth reaches ~~the age of~~ 21 years of age."

7
 8 **Section 17.** Section 41-5-206, MCA, is amended to read:

9 **"41-5-206. Transfer to criminal court prior to prosecution .** (1) After a petition has been filed
 10 alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its
 11 merits, transfer the matter of prosecution to the district court if:

12 (a) ~~if~~ the youth charged was 12 years of age or ~~more~~ older at the time of the conduct alleged
 13 to be unlawful and the unlawful act would if it had been committed by an adult constitute:

14 (i) sexual intercourse without consent as defined in 45-5-503₂;

15 (ii) deliberate homicide as defined in 45-5-102₂;

16 (iii) mitigated deliberate homicide as defined in 45-5-103₂; or

17 (iv) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either
 18 deliberate or mitigated deliberate homicide ~~if the act had been committed by an adult; or~~

19 ~~(b)~~ (b) the youth charged was 16 years of age or ~~more~~ older at the time of the conduct alleged to
 20 be unlawful and the unlawful act is one or more of the following:

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

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

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

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

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

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

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

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

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

30 ~~(J)~~(x) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of

1 the acts enumerated in subsections ~~(1)(a)(iii)(A)~~ (1)(b)(i) through ~~(1)(a)(iii)(H)~~ (1)(b)(x);

2 ~~(b)(c)~~ a hearing on whether the transfer should be made is held in conformity with the rules on a
3 hearing on a petition alleging delinquency, except that the hearing must be conducted by the youth court
4 without a jury;

5 ~~(d)~~ notice in writing of the time, place, and purpose of the hearing is given to the youth, the
6 youth's counsel, and the youth's parents, guardian, or custodian at least 10 days before the hearing; and

7 ~~(e)~~ the court finds upon the hearing of all relevant evidence that there is probable cause to
8 believe that:

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

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

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

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

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

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

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

25 (4) If the youth was 17 years of age or older at the time of committing any transferable offense,
26 the court shall grant the motion to transfer.

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

29 ~~(6)~~ The transfer terminates the jurisdiction of the youth court over the ~~youth~~ offender with
30 respect to the acts alleged in the petition. ~~A youth~~ An offender may not be prosecuted in the district court

1 for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been
 2 transferred as provided in this section. A case may be transferred to district court after prosecution as
 3 provided in 41-5-208 or 41-5-1105.

4 ~~(6)~~(7) Upon order of the youth court transferring the case to the district court under subsection
 5 ~~(5)~~(6), the county attorney shall file the information against the youth without unreasonable delay.

6 ~~(7)~~(8) ~~Any~~ An offense not enumerated in subsection (1) that arises during the commission of a
 7 crime 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)~~(9) If ~~a youth~~ an offender is found guilty in district court of any of the offenses transferred by
 12 the youth court and is sentenced to the state prison, the commitment must be to the department of
 13 corrections. The department shall confine the youth offender in whatever institution that it considers proper,
 14 including a state youth correctional facility under the procedures of 52-5-111. However, ~~a youth~~ an
 15 offender under 16 years of age may not be confined in ~~the~~ any state prison.

16 ~~(9)~~(10) ~~A youth~~ An offender whose case is transferred to district court may not be detained or
 17 otherwise placed in a jail or other adult detention facility before final disposition of the youth's offender's
 18 case unless:

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

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

22
 23 **Section 18.** Section 41-5-301, MCA, is amended to read:

24 "**41-5-301. Preliminary investigation and disposition.** (1) Whenever the court receives information
 25 from ~~any~~ an agency or person, based upon reasonable grounds, that a youth is or appears to be a
 26 delinquent youth or a youth in need of supervision intervention or, being that the youth is subject to a court
 27 order or consent order, and has violated the terms of an order, a probation officer or an assessment officer
 28 shall make a preliminary inquiry into the matter.

29 (2) The probation officer or assessment officer may:

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

- 1 (b) request subpoenas from the judge to accomplish this purpose;
- 2 (c) require investigation of the matter by any law enforcement agency or any other appropriate
3 state or local agency.
- 4 (3) If the probation officer or assessment officer determines that the facts indicate that the youth
5 is a youth in need of care, the matter must be immediately referred to the department of public health and
6 human services.
- 7 (4) (a) The probation officer or assessment officer in the conduct of the preliminary inquiry shall:
- 8 (i) advise the youth of the youth's rights under this chapter and the constitutions of the state of
9 Montana and the United States;
- 10 (ii) determine whether the matter is within the jurisdiction of the court;
- 11 (iii) determine, if the youth is in detention, youth assessment placement, or shelter care, whether
12 detention, youth assessment placement, or shelter care should be continued or modified based upon criteria
13 set forth in 41-5-305.
- 14 (b) Once relevant information is secured, the probation officer or assessment officer shall:
- 15 (i) determine whether the interest of the public or the youth requires that further action be taken;
- 16 (ii) terminate the inquiry upon the determination that no further action be taken; and
- 17 (iii) release the youth immediately upon the determination that the filing of a petition is not
18 authorized.
- 19 (5) The probation officer or assessment officer upon determining that further action is required
20 may:
- 21 (a) provide counseling, refer the youth and the youth's ~~parents~~ family to another agency providing
22 appropriate services, or take any other action or make any informal adjustment that does not involve
23 probation or detention;
- 24 (b) provide for treatment or adjustment involving probation or other disposition authorized under
25 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents
26 or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if
27 the probation officer or assessment officer proceeds no further unless authorized by the county attorney;
28 or
- 29 (c) refer the matter to the county attorney for filing a petition in youth court charging the youth
30 to be a delinquent youth or a youth in need of ~~supervision~~ intervention or for filing an information in the

1 district court as provided in 41-5-206.

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

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

9 (8) If a petition is not filed under this section, the complainant and victim, if any, must be informed
10 by the probation officer or assessment officer of the action and the reasons for not filing and must be
11 advised of the right to submit the matter to the county attorney for review. The county attorney, upon
12 receiving a request for review, shall consider the facts, consult with the probation officer or assessment
13 officer, and make the final decision as to whether a petition is filed."

14

15 **Section 19.** Section 41-5-303, MCA, is amended to read:

16 **"41-5-303. Rights of youth taken into custody -- questioning -- hearing for probable cause --**
17 **detention.** (1) When a youth is taken into custody for questioning upon a matter that could result in a
18 petition alleging that the youth is either a delinquent youth or a youth in need of ~~supervision~~ intervention,
19 the following requirements must be met:

20 (a) The youth must be advised of ~~his~~ the youth's right against self-incrimination and ~~his~~ the youth's
21 right to counsel.

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

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

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

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

28 (c) The investigating officer, probation officer, or person assigned to give notice shall immediately
29 notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody,
30 the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian,

1 or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth
2 must be notified.

3 (2) Unless a youth has been released, a hearing must be held within 24 hours after the youth is
4 taken into custody, excluding weekends and legal holidays, to determine whether there is probable cause
5 to believe that the youth is a delinquent youth or a youth in need of ~~supervision~~ intervention.

6 (3) The probable cause hearing required under subsection (2) may be held by the youth court, a
7 justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided
8 in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or
9 a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the
10 hearing.

11 (4) At the probable cause hearing, the youth must be informed of ~~his~~ the youth's constitutional
12 rights and ~~his~~ the youth's rights under this chapter.

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

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

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

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

20 (7) If it is determined that there is probable cause to believe that the youth is a delinquent youth
21 or is a youth in need of ~~supervision~~ intervention, the court having jurisdiction in the case shall determine
22 whether the youth should be retained in custody. If the court determines that continued custody of the
23 youth is necessary and if the youth meets the criteria in 41-5-305, the youth may be placed in a detention
24 facility, a youth assessment placement, or a shelter care facility as provided in 41-5-306 but may not be
25 placed in a jail or other facility used for the confinement of adults accused or convicted of criminal offenses.

26 (8) If probable cause is not found or if a probable cause hearing is not held within the time specified
27 in subsection (2), the youth must be immediately released from custody."
28

29 **Section 20.** Section 41-5-304, MCA, is amended to read:

30 **"41-5-304. Investigation, fingerprints, and photographs.** (1) All law enforcement investigations

1 relating to a delinquent youth or youth in need of ~~supervision~~ intervention must be conducted in accordance
2 with this chapter and Title 46.

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

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

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

7 (c) upon the order of the youth court judge, after a petition alleging delinquency has been filed in
8 which the unlawful act alleged is a felony.

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

12
13 **Section 21.** Section 41-5-305, MCA, is amended to read:

14 **"41-5-305. Criteria for placement of youth in secure detention facilities, youth assessment**
15 **placements, or shelter care facilities.** (1) A youth may not be placed in a secure detention facility unless:

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

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

19 (i) ~~he~~ the youth has escaped from a correctional facility or secure detention facility;

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

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

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

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

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

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

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

30 (a) the youth and ~~his~~ the youth's family need shelter care to address their problematic situation

1 when it is not possible for the youth to remain at home;

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

3 (c) the youth needs to be deterred or prevented from immediate repetition of ~~his~~ the youth's
4 troubling behavior;

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

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

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

9 (3) A youth may not be placed in a youth assessment placement unless:

10 (a) the youth meets the requirements for placement in shelter care;

11 (b) the youth has not committed an act that would be a felony offense if committed by an adult;

12 (c) the youth needs an alternative, staff-secured site for evaluation and assessment of the youth's
13 and the youth's family's need for services;

14 (d) the youth needs to be held accountable for the youth's actions with structured programming;

15 and

16 (e) the youth meets qualifications as outlined by the placement guidelines that are determined by
17 the department and coordinated with the guidelines used by the youth placement committees."

18
19 **Section 22.** Section 41-5-306, MCA, is amended to read:

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

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

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

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

26 (a) in a licensed youth care facility as defined in 41-3-1102;

27 (b) in a youth assessment placement; or

28 ~~(d)(c)~~ under home arrest, with or without a monitoring device, either in the youth's own home or
29 in one of the facilities described in subsections (1)(a) through (1)(e) a licensed youth care facility, as
30 provided in Title 46, chapter 18, part 10.

1 (2) A youth alleged to be a youth in need of care may be placed only ~~in the facilities listed in~~
 2 ~~subsection (1)~~ by the department of public health and human services as provided in Title 41, chapter 3,
 3 and may not be placed in a youth assessment placement or in a jail or other facility intended or used for
 4 the confinement of adults accused or convicted of criminal offenses.

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

- 7 (a) in the facilities described in subsection (1);
- 8 (b) under home arrest as provided in subsection (1);
- 9 (c) in a short-term detention center;
- 10 (d) in a youth detention facility; or
- 11 (e) in a community youth court program."

12
 13 **Section 23.** Section 41-5-401, MCA, is amended to read:

14 "**41-5-401. Consent adjustment without petition.** (1) ~~Before a petition is filed~~ referring the matter
 15 to the county attorney and subject to the limitations in subsection (3), the probation officer or assessment
 16 officer may enter into an informal adjustment and give counsel and advice to the youth, the youth's family,
 17 and other interested parties if it appears that:

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

25 (2) Any probation or other disposition imposed under this section against ~~any~~ a youth must
 26 conform 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 or assessment officer believes the youth is a youth in need of
 30 ~~supervision~~ intervention, the probation officer or assessment officer shall determine that the parents, foster

1 parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the
 2 youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster
 3 parents, physical custodian, or guardian.

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

6 (3) A consent adjustment without petition under this section may not be used to dispose of a
 7 youth's alleged second or subsequent offense if that offense would be a felony if committed by an adult."

8
 9 **Section 24.** Section 41-5-403, MCA, is amended to read:

10 **"41-5-403. Disposition permitted under informal adjustment -- contributions by parents or**
 11 **guardians for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

12 (a) probation;

13 (b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and
 14 ~~as determined by the department~~ pursuant to a recommendation made under 41-5-525;

15 (c) placement of the youth with a private agency responsible for the care and rehabilitation of the
 16 youth ~~as determined by the department~~ pursuant to a recommendation made under 41-5-525;

17 (d) restitution, as provided in [section 30], upon approval of the youth court judge;

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

19 (f) a requirement that the youth; the youth's parents, guardians, or family; or the persons having
 20 legal custody of the youth receive counseling services;

21 (g) placement of the youth in a youth assessment placement for up to 10 days;

22 (h) placement of the youth in detention for up to 3 days on a space-available basis;

23 (i) the confiscation of the youth's driver's license for up to 30 days by the youth's juvenile
 24 probation officer;

25 (j) a requirement that the youth perform community service;

26 (k) a requirement that the youth participate in victim-offender mediation;

27 (l) an order that the youth or the youth's parents or guardians pay a contribution covering all or
 28 a part of the costs for the adjudication, disposition, supervision, care, custody, and treatment of the youth,
 29 including the costs of court-appointed counseling;

30 (m) an order that the youth or the youth's parents or guardians pay a contribution covering all or

1 a part of the costs of a victim's counseling or restitution for damages that result from the offense for which
 2 the youth is disposed.

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

5 ~~(a) age of the youth;~~

6 ~~(b) ability of the youth to pay;~~

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

9 ~~(d) amount of damage to the victim; and~~

10 ~~(e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand~~
 11 ~~any loss may not be considered in any case.~~

12 ~~(3)(2)~~ If the youth violates ~~an aftercare~~ a juvenile parole agreement as provided for in 52-5-126,
 13 the youth must be returned to the court for further disposition. A youth may not be placed in a state youth
 14 correctional facility under informal adjustment.

15 ~~(4)(3)~~ If the youth is placed in substitute care, an assessment placement, or detention requiring
 16 payment by ~~the~~ any state department or local government agency, the court shall examine the financial
 17 ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the
 18 adjudication, disposition, supervision, care, placement, and treatment of the youth, including the costs of
 19 necessary medical, dental, and other health care.

20 ~~(5)(4)~~ If the court determines that the youth's parents or guardians are financially able to pay a
 21 contribution as provided in subsection ~~(4)~~ (3), the court shall order the youth's parents or guardians to pay
 22 an amount attributable to care, custody, and treatment based on the uniform child support guidelines
 23 adopted by the department of public health and human services pursuant to 40-5-209. The order must
 24 state to which state or local agency all or a part of the contribution is due and in what order the payments
 25 will be made.

26 ~~(6)(5)~~ (a) Except as provided in subsection ~~(6)(b)~~ (5)(b), contributions ordered under this section
 27 and each modification of an existing order are enforceable by immediate or delinquency income withholding,
 28 or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section
 29 is nevertheless subject to withholding for the payment of the contribution without need for an amendment
 30 of the support order or for any further action by the court.

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

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

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

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

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

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

13 (d) An alternative arrangement must:

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

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

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

18 ~~(7)(6)~~ (a) If the court orders the payment of contributions under this section, the department shall
 19 apply to the department of public health and human services for support enforcement services pursuant
 20 to Title IV-D of the Social Security Act.

21 (b) The department of public health and human services may collect and enforce a contribution
 22 order under this section by any means available under law, including the remedies provided for in Title 40,
 23 chapter 5, parts 2 and 4."

24
 25 **Section 25.** Section 41-5-501, MCA, is amended to read:

26 "**41-5-501. Petition -- form and content.** A petition initiating proceedings under this chapter ~~shall~~
 27 must be signed by the county attorney, ~~and shall~~ must be entitled "In the Matter of, a youth", ~~and shall~~
 28 must set forth with specificity:

29 (1) the facts necessary to invoke the jurisdiction of the court, together with a statement alleging
 30 the youth to be a delinquent youth or a youth in need of ~~supervision~~ intervention;

- 1 (2) the charge of an offense, which ~~shall~~ must:
- 2 (a) state the name of the offense;
- 3 (b) cite in customary form the statute, rule, or other provisions of law ~~which~~ that the youth is
- 4 alleged to have violated;
- 5 (c) state the facts constituting the offense in ordinary and concise language and in ~~such a~~ a manner
- 6 ~~as to enable~~ that enables a person of common understanding to know what is intended; and
- 7 (d) state the time and place of the offense as definitely as ~~can be done~~ possible;
- 8 (3) the name, ~~birth date~~ date of birth, and residence address of the youth;
- 9 (4) the names and residence addresses of the parents, guardian, ~~and~~ or spouse of the youth and,
- 10 if ~~none of~~ the parents, guardian, or spouse ~~resides~~ do not reside or ~~can~~ cannot be found within the state
- 11 or if there is none, the adult relative residing nearest to the court;
- 12 (5) whether the youth is in detention, youth assessment placement, or shelter care and, if so, the
- 13 place of detention, youth assessment placement, or shelter care and the time ~~he~~ that the youth was
- 14 detained or sheltered;
- 15 (6) if any of the matters required to be set forth by this section are not known, a statement of
- 16 those matters and the fact that they are not known; and
- 17 (7) a list of witnesses to be used in proving the commission of the offense or offenses charged in
- 18 the petition, together with their residence addresses. The names and addresses of any witnesses discovered
- 19 after the filing of the petition ~~shall~~ must be furnished to the youth upon request."

20

21 **Section 26.** Section 41-5-511, MCA, is amended to read:

22 **"41-5-511. Right to counsel.** In all proceedings following the filing of a petition alleging that a

23 youth is a delinquent youth or youth in need of ~~supervision~~ intervention, the youth and the parents or

24 guardian of the youth ~~shall~~ must be advised by the court or, in the absence of the court, by its

25 representative that the youth may be represented by counsel at all stages of the proceedings. If counsel

26 is not retained or if it appears that counsel will not be retained, counsel ~~shall~~ must be appointed for the

27 youth if the parents or guardian and the youth are unable to provide counsel unless the right to appointed

28 counsel is waived by the youth and the parents or guardian. Neither the youth nor ~~his parent~~ the youth's

29 parents or guardian may waive counsel after a petition has been filed if commitment to the department for

30 a period of more than 6 months may result from adjudication."

1 **Section 27.** Section 41-5-515, MCA, is amended to read:

2 "**41-5-515. ~~Persons to be advised of rights~~ Rights and obligations -- persons to be advised --**
3 **contempt.** (1) ~~Persons~~ A person afforded rights under this chapter ~~shall~~ must be advised of those rights
4 and any other rights existing under law at the time of ~~their~~ the person's first appearance in a proceeding
5 on a petition under the Montana Youth Court Act and at any other time specified in that act or other law.

6 (2) A person must be advised of obligations that may arise under this chapter, including the
7 possibility that the person may be required to reimburse the state or local governments for costs attributable
8 to the adjudication, disposition, supervision, care, custody, and treatment of the youth and may be required
9 to participate in counseling, treatment, or other support services.

10 (3) A youth's parents or guardians are obligated to assist and support the youth court in
11 implementing the court's orders concerning a youth under youth court jurisdiction, and the parents or
12 guardians are subject to the court's contempt powers if they fail to do so."

13
14 **Section 28.** Section 41-5-521, MCA, is amended to read:

15 "**41-5-521. Adjudicatory hearing.** (1) ~~Prior to~~ Before any adjudicatory hearing, the court shall
16 determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all
17 offenses alleged in the petition, the youth or the youth's parent, guardian, or attorney may demand a jury
18 trial on the contested offenses. In the absence of a demand, a jury trial is waived. If the youth denies some
19 offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court
20 judge. The adjudicatory hearing must be set immediately and accorded a preferential priority.

21 (2) An adjudicatory hearing must be held to determine whether the contested offenses are
22 supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in
23 need of ~~supervision~~ intervention. If the hearing is before a jury, the jury's function is to determine whether
24 the youth committed the contested offenses. If the hearing is before the youth court judge without a jury,
25 the judge shall make and record findings on all issues. If the allegations of the petitions are not established
26 at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

27 (3) An adjudicatory hearing must be recorded verbatim by whatever means the court considers
28 appropriate.

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

1 (5) In a hearing on a petition under this section, the general public may not be excluded, except
2 that in the court’s discretion, the general public may be excluded if the petition does not allege that the
3 youth is delinquent.

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

7 (7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title
8 25, chapter 7, part 2, and in Rule 47, M.R.Civ.P."

9
10 **Section 29.** Section 41-5-522, MCA, is amended to read:

11 **"41-5-522. Dispositional hearing -- contributions by parents or guardians for expenses.** (1) As soon
12 as practicable after a youth is found to be a delinquent youth or a youth in need of ~~supervision~~ intervention,
13 the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of the
14 financial ability of the youth’s parents or guardians to pay a contribution for the cost of the adjudication,
15 disposition, supervision, care, commitment, and treatment of the youth as required in 41-5-523 or [section
16 32], including the costs of necessary medical, dental, and other health care.

17 (2) Before conducting the dispositional hearing, the court shall direct that a social summary, family
18 assessment, or predisposition report be made in writing by a probation officer concerning the youth, the
19 youth’s family, the youth’s environment, any statement by the victim or the victim’s family, and other
20 matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have
21 the youth examined, and the results of the examination must be made available to the court as part of the
22 social summary, family assessment, or predisposition report. The court may order the examination of a
23 parent or guardian whose ability to care for or supervise a youth is at issue before the court. The results
24 of the examination must be included in the social summary, family assessment, or predisposition report.
25 The youth or the youth’s parents, guardian, or counsel has the right to subpoena all persons who have
26 prepared any portion of the social summary, family assessment, or predisposition report and has the right
27 to cross-examine the parties at the dispositional hearing.

28 (3) Defense counsel must be furnished with a copy of the social summary, family assessment, or
29 predisposition report and psychological report prior to the dispositional hearing.

30 (4) The dispositional hearing must be conducted in the manner set forth in subsections (3), (4), and

1 (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving
 2 the interests of the youth and the public. The evidence must include but is not limited to the social
 3 summary, family assessment, and predisposition report provided for in subsection (2) of this section.

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

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

- 9 ~~(a) age of the youth;~~
 10 ~~(b) ability of the youth to pay;~~
 11 ~~(c) ability of the parents, legal guardian, or those that contributed to the youth's delinquency or
 12 need for supervision to pay;~~
 13 ~~(d) amount of damage to the victim; and~~
 14 ~~(e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand
 15 any loss may not be considered in any case."~~

17 **NEW SECTION. Section 30. Restitution.** (1) In determining whether restitution, as authorized by
 18 41-5-403 and 41-5-523, is appropriate in a particular case, the following factors may be considered in
 19 addition to any other evidence:

- 20 (a) the age of the youth;
 21 (b) the ability of the youth to pay;
 22 (c) the ability of the parents, guardian, or those that contributed to the youth's delinquency or need
 23 for supervision to pay;
 24 (d) the amount of damage to the victim; and
 25 (e) any victim statement given to the court. However, the ability of the victim or the victim's
 26 insurer to stand any loss may not be considered.

27 (2) Restitution paid by a youth or a youth's parents or guardians is subject to subrogation as
 28 provided in 46-18-248.

30 **Section 31.** Section 41-5-523, MCA, is amended to read:

1 "41-5-523. Disposition of youth in need of intervention or youth who violate informal consent
 2 adjustments—sentence to correctional facility—commitment to department—placement and evaluation
 3 of youth—restrictions. (1) If a youth is found to be a delinquent youth or a youth in need of supervision
 4 intervention or to have violated an informal consent adjustment, the youth court may enter its judgment
 5 making one or more of the following dispositions:

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

7 ~~(b)(a) place the youth on probation;~~ The youth court shall retain jurisdiction in a disposition under
 8 this subsection.

9 ~~(c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state~~
 10 ~~youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth~~
 11 ~~eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years~~
 12 ~~of age. A youth may not be sentenced to a state youth correctional facility unless the department informs~~
 13 ~~the judge that space is available for the youth at that facility. The sentencing judge may not place~~
 14 ~~limitations on the release unless recommended by the youth placement committee.~~

15 ~~(d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and~~
 16 ~~46-23-506;~~

17 ~~(e)(b) place the youth in an in-state residence that ensures that the youth is accountable, that~~
 18 ~~provides for rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek~~
 19 ~~and consider placement recommendations from the youth placement committee. The judge may not place~~
 20 ~~the youth in an in-state residence unless the department informs the judge that resources are available for~~
 21 ~~placement of the youth at that residence.~~

22 ~~(f)(c) commit the youth to the department;~~ with the following conditions:

23 ~~(i) In an order committing a youth to the department;~~

24 ~~(i)~~ the court shall determine whether continuation in the youth's own home would be contrary to
 25 the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need
 26 for removal of the youth from the youth's home;

27 ~~(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile~~
 28 ~~offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge~~
 29 ~~finds that the placement is necessary for the protection of the public. The court may order the department~~
 30 ~~to notify the court within 5 working days before the proposed release of a youth from a youth correctional~~

1 ~~facility. Once a youth is committed to the department for placement in a state youth correctional facility,~~
 2 ~~the department is responsible for determining an appropriate date of release into an appropriate placement.~~

3 (ii) The department may not place a youth in need of intervention, a youth adjudicated delinquent
 4 for commission of an act that would not be an offense if committed by an adult, or a youth who violates
 5 an informal consent adjustment in a state youth correctional facility.

6 ~~(g)(d)~~ order restitution for damages that result from the offense for which the youth is disposed
 7 by the youth or the youth's parents or guardians;

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

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

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

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

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

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

22 ~~(n)(j)~~ subject to the provisions of [section 34], commit the youth to a mental health facility if, based
 23 upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is
 24 seriously mentally ill as defined in 53-21-102; ~~The youth is entitled to all rights provided by 53-21-114~~
 25 ~~through 53-21-119.~~

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

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

1 ~~(e)(k)~~ place the youth under home arrest as provided in Title 46, chapter 18, part 10-;

2 (l) order the youth or the youth's parents or guardians to pay a contribution covering all or a part
3 of the costs for the adjudication, disposition, supervision, care, custody, and treatment of the youth,
4 including the costs of court-appointed counseling;

5 (m) order the youth or the youth's parents or guardians to pay a contribution covering all or a part
6 of the costs of a victim's counseling;

7 (n) defer imposition of a sentence for up to 45 days for a placement evaluation at a suitable
8 program or facility with the following conditions:

9 (i) The court may not order placement for evaluation at a youth correctional facility of a youth who
10 has committed an offense that would not be a criminal offense if committed by an adult.

11 (ii) The court may require the youth's parents or guardians to pay a contribution covering all or a
12 part of the costs of the evaluation if the court determines after an examination of financial ability that the
13 parents or guardians are able to pay the contribution.

14 (o) order placement of a youth in a youth assessment placement for up to 10 days.

15 ~~(2) When a youth is committed to the department, the department shall determine the appropriate~~
16 ~~placement and rehabilitation program for the youth after considering the recommendations made under~~
17 ~~41-5-527 by the youth placement committee. Placement is subject to the following limitations:~~

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

20 ~~(b) A youth may not be held in a state youth correctional facility for a period of time in excess of~~
21 ~~the maximum period of imprisonment that could be imposed on an adult convicted of the offense or~~
22 ~~offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the~~
23 ~~power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.~~

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

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

1 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 offense that~~
18 ~~is transferable to criminal court under 41-5-206.~~

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, 41-5-208, or 41-5-1106.~~

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 public health and~~
 4 ~~human 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 youth; 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 public health and human services for support enforcement services pursuant~~

1 to Title IV-D of the Social Security Act.

2 ~~(b) The department of public health and human services may collect and enforce a contribution~~
 3 ~~order 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 (2) A youth placed under this section must be supervised by the youth court and not by the
 6 department."

7
 8 **NEW SECTION. Section 32. Disposition -- delinquent youth -- restrictions.** (1) If a youth is found
 9 to be a delinquent youth, the youth court may enter its judgment making one or more of the following
 10 dispositions:

11 (a) any one or more of the dispositions provided in 41-5-523;

12 (b) subject to 41-5-523(1)(c)(ii) or (1)(n)(i), [section 33(1)], and [section 34(2)], sentence a youth
 13 to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence,
 14 deny the youth eligibility for release without the express approval of the sentencing judge until the youth
 15 reaches 18 years of age. A youth may not be sentenced to a state youth correctional facility unless the
 16 department informs the judge that space is available for the youth at that facility. Except as provided in
 17 subsection (2), the sentencing judge may not place limitations on the release unless recommended by the
 18 youth placement committee. A youth may not be sentenced to a state youth correctional facility for a
 19 longer time than the length of sentence the youth would receive for commission of the same act by an
 20 adult.

21 (c) require a youth found to be a delinquent youth, as the result of the commission of an offense
 22 that would be a violation of 45-5-502 through 45-5-504, or 45-5-507 if committed by an adult, to register
 23 as a sex offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a
 24 disposition under this subsection.

25 (d) require the youth's driver's license to be confiscated by the juvenile probation officer for up to
 26 30 days;

27 (e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense
 28 if committed by an adult.

29 (2) If a youth has been adjudicated for a sex offense, the youth court may require sex offender
 30 treatment.

1 **NEW SECTION. Section 33. Disposition -- commitment to department -- restrictions on placement.**

2 When a youth is committed to the department, the department shall determine the appropriate placement
3 and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by
4 the youth placement committee. Placement is subject to the limitations contained in 41-5-523(1)(c)(ii) and
5 the following limitations:

6 (1) A youth may not be held in a state youth correctional facility for a period of time in excess of
7 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or
8 offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the
9 power of the department to enter into a juvenile parole with the youth pursuant to 52-5-126.

10 (2) A youth may not be placed in or transferred to a state adult correctional facility or other facility
11 used for the execution of sentences of adults convicted of crimes.

12 (3) Only a youth adjudicated delinquent or a person under 18 years of age convicted of a crime
13 pursuant to a transfer to district court may be placed in a youth correctional facility.

14
15 **NEW SECTION. Section 34. Disposition -- finding of mentally ill or seriously mentally ill -- rights**

16 **-- limitation on placement.** (1) A youth who is found to be seriously mentally ill, as defined in 53-21-102,
17 is entitled to all rights provided by 53-21-114 through 53-21-119.

18 (2) A youth who, before placement or sentencing, is found to be mentally ill, as defined in
19 41-5-103, or seriously mentally ill, as defined in 53-21-102, may not be committed or sentenced to a state
20 youth correctional facility.

21 (3) A youth who is found to be mentally ill or seriously mentally ill after placement in or sentencing
22 to a state youth correctional facility must be moved to a more appropriate placement in response to the
23 youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

24
25 **NEW SECTION. Section 35. Disposition -- commitment to department -- supervision.** (1) A youth

26 placed in a state youth correctional facility or other facility or program operated by the department or who
27 signs a juvenile parole agreement under 52-5-126 must be supervised by the department.

28 (2) A youth who is placed in any other placement by the department, the youth court, or the youth
29 court's juvenile probation officer must be supervised by the probation officer of the youth court having
30 jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department.

1 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

9 **NEW SECTION. Section 36. Disposition -- commitment to department -- transfer of records.**

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

14

15 **NEW SECTION. Section 37. Disposition -- medical or psychological evaluation of youth.** (1) The
16 youth court may order a youth to receive a medical or psychological evaluation at any time before final
17 disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The
18 county determined by the court as the residence of the youth is responsible for the cost of the evaluation,
19 except as provided in subsection (2). A county may contract with the department or other public or private
20 agencies to obtain evaluation services ordered by the court.

21 (2) The youth court shall determine the financial ability of the youth's parents or guardians to pay
22 the cost of an evaluation ordered by the court under subsection (1). If they are financially able, the court
23 shall order the youth's parents or guardians to pay all or part of the cost of the evaluation.

24 (3) Subject to 41-5-523(1)(n)(i), the youth court may not order an evaluation or placement of a
25 youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged
26 to have committed an offense that is transferable to district court under 41-5-206.

27 (4) An evaluation of a youth may not be performed at the Montana state hospital unless the youth
28 is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

29

30 **NEW SECTION. Section 38. Modification of court orders -- notice to department -- hearing.** (1)

1 An order of the court may be modified at any time following notification to the youth, the youth's parents,
2 and the youth's attorney.

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

5
6 **NEW SECTION. Section 39. Contribution for costs -- order for contribution -- exceptions --**
7 **collection.** (1) When a youth is committed to the department, the court shall require the youth's parents
8 or guardians to fill out financial affidavits and file them with the court. The court shall make a
9 determination regarding the financial ability of the youth's parents or guardians to pay a contribution
10 covering all or part of the costs for the adjudication, disposition, supervision, care, commitment, and
11 treatment of the youth, including the costs of necessary medical, dental, and other health care.

12 (2) If the court determines that the youth's parents or guardians are financially able to pay a
13 contribution as provided in subsection (1), the court shall order the youth's parents or guardians to pay to
14 the department, an amount attributable to care, custody, and treatment based on the uniform child support
15 guidelines adopted by the department of public health and human services pursuant to 40-5-209.

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

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

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

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

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

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

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

3 (d) An alternative arrangement must:

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

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

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

8 (4) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,
9 the court may modify its order for the payment of contributions required under subsection (2).

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

13 (b) The department of public health and human services may collect and enforce a contribution
14 order 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 40.** Section 41-5-524, MCA, is amended to read:

18 "**41-5-524. Consent decree with petition.** (1) ~~At any time~~ (a) Subject to the provisions of
19 subsection (2), after the filing of a petition ~~alleging that a youth is a delinquent youth or a youth in need~~
20 ~~of supervision under 41-5-501~~ and before the entry of a judgment, the court may, on motion of counsel
21 for the youth or on the court's own motion, suspend the proceedings and continue the youth under
22 supervision under terms and conditions negotiated with probation services and agreed to by all necessary
23 parties. The court's order continuing the child under supervision under this section ~~shall be~~ is known as a
24 "consent decree". ~~The~~ Except as provided in subsection (1)(b), the procedures used and dispositions
25 permitted under this section ~~shall~~ must conform to the procedures and dispositions specified in 41-5-401
26 through 41-5-403 relating to consent adjustments without petition and the responsibility of the youth's
27 parents or guardians to pay a contribution for the costs of placement in substitute care.

28 (b) A youth may be placed in detention for up to 10 working days on a space-available basis.

29 (2) A consent decree under this section may not be used by the court unless the youth admits guilt
30 for any charges of an offense set forth in the petition and accepts responsibility for the youth's actions.

1 ~~(2)~~(3) If the youth or ~~his~~ the youth's counsel objects to a consent decree, the court shall proceed
2 to findings, adjudication, and disposition of the case.

3 ~~(3)~~(4) If, either ~~prior to~~ before discharge by probation services or expiration of the consent decree,
4 a new petition alleging that the youth is a delinquent youth or a youth in need of ~~supervision~~ intervention
5 is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent
6 decree, the petition under which the youth was continued under supervision may be reinstated in the
7 discretion of the county attorney in consultation with probation services. In the event of reinstatement, the
8 proceeding on the petition ~~shall~~ must be continued to conclusion as if the consent decree had never been
9 entered.

10 ~~(4)~~(5) A youth who is discharged by probation services or who completes a period under
11 supervision without reinstatement of the original petition may not again be proceeded against in any court
12 for the same offense alleged in the petition, and the original petition ~~shall~~ must be dismissed with prejudice.
13 ~~Nothing in this~~ This subsection ~~precludes~~ does not preclude a civil suit against the youth for damages
14 arising from ~~his~~ the youth's conduct.

15 ~~(5)~~(6) In all cases ~~where~~ in which the terms of the consent decree ~~shall~~ extend for a period in
16 excess of 6 months, the probation officer shall at the end of each 6-month period submit a report ~~which~~
17 ~~shall~~ that must be reviewed by the court.

18 (7) A consent decree with petition under this section may not be used to dispose of a youth's
19 alleged second or subsequent offense if that offense would be a felony if committed by an adult."

20
21 **Section 41.** Section 41-5-525, MCA, is amended to read:

22 **"41-5-525. Youth placement committees -- composition.** (1) In each judicial district, the
23 department shall establish a youth placement committee for the purposes of:

24 (a) recommending an appropriate placement of a youth referred to the department under 41-5-403;
25 or

26 (b) recommending available community services or alternative placements whenever a change is
27 required in the placement of a youth who is currently in the custody of the department under 41-5-523.
28 However, the committee may not substitute its judgment for that of the superintendent of a state youth
29 correctional facility regarding the discharge of a youth from the facility.

30 (2) The committee consists of not less than five members and must include persons who are

1 knowledgeable about the youth, treatment and placement options, and other resources appropriate to
2 address the needs of the youth. Members may include:

3 (a) two representatives of the department;

4 (b) a representative of the department of public health and human services;

5 (c) either the chief probation officer or the youth's probation officer;

6 (d) a mental health professional;

7 (e) a representative of a school district located within the boundaries of the judicial district who
8 must have personal knowledge of and experience with the youth;

9 (f) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable
10 about Indian culture and family matters;

11 (g) a parent or guardian; and

12 (h) a youth services provider.

13 (3) Committee members serve without compensation.

14 (4) Notwithstanding the provisions of 41-5-527, the committee may be convened by the
15 department or the probation officer of the youth court.

16 (5) If a representative of a school district is not included on the committee, the person who
17 convened the committee shall inform the school district of the final placement decision for the child."

18
19 **Section 42.** Section 41-5-530, MCA, is amended to read:

20 **"41-5-530. Parental contributions account -- allocation of proceeds.** (1) There is a parental
21 contributions account in the state special revenue fund.

22 (2) Contributions paid by the parents and guardians of youth under 41-3-406, 41-5-403, 41-5-523,
23 or 41-5-524 for care, placement, and treatment must be deposited in the account.

24 (3) All money in the account, except any amount required to be returned to federal or county
25 sources, is allocated to the department of public health and human services to carry out its duties under
26 52-1-103."

27
28 **Section 43.** Section 41-5-533, MCA, is amended to read:

29 **"41-5-533. Probation revocation -- disposition.** (1) A youth on probation incident to an
30 adjudication that ~~he~~ the youth is a delinquent youth or a youth in need of ~~supervision~~ intervention and ~~who~~

1 ~~violates~~ that the youth has violated a term of ~~such~~ probation may be proceeded against in a probation
 2 revocation proceeding. A proceeding to revoke probation ~~shall~~ must be done by filing in the original
 3 proceeding a petition styled "petition to revoke probation".

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

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

15
 16 **Section 44.** Section 41-5-603, MCA, is amended to read:

17 "**41-5-603. Youth court and department records.** (1) Except as provided in subsection (2), all
 18 youth court records on file with the clerk of court, including reports of preliminary inquiries, petitions,
 19 motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection
 20 until the records are sealed under 41-5-604.

21 (2) Social, medical, and psychological records, family assessment materials, predispositional
 22 studies, and supervision records of probationers, ~~and any report, charge, or allegation that is not~~
 23 ~~adjudicated pursuant to this chapter~~ are open only to the following:

- 24 (a) the youth court and its professional staff;
- 25 (b) representatives of any agency providing supervision and having legal custody of a youth;
- 26 (c) any other person, by order of the court, having a legitimate interest in the case or in the work
 27 of the court;
- 28 (d) any court and its probation and other professional staff or the attorney for a convicted party
 29 who had been a party to proceedings in the youth court when considering the sentence to be imposed upon
 30 the party;

- 1 (e) the county attorney;
- 2 (f) the youth who is the subject of the report or record, after emancipation or reaching the age of
3 majority;
- 4 (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is
5 not listed in this subsection (2);
- 6 (h) members of a local interagency staffing group provided for in 52-2-203; and
- 7 (i) persons allowed access to the records referred to under 45-5-624(7).
- 8 (3) Any part of records information secured from records listed in subsection (2), when presented
9 to and used by the court in a proceeding under this chapter, must also be made available to the counsel
10 for the parties to the proceedings.
- 11 (4) After youth court and department records, reports of preliminary inquiries, predispositional
12 studies, and supervision records of probationers are sealed, they are not open to inspection except, upon
13 order of the youth court, for good cause to:
- 14 (a) those persons and agencies listed in subsection (2); and
- 15 (b) adult probation professional staff preparing a presentence report on a youth who has reached
16 the age of majority."

17

18 **Section 45.** Section 41-5-605, MCA, is amended to read:

19 **"41-5-605. Youth court records -- public record.** Except as provided in 41-5-603, all youth court
20 records on file with the clerk of court related to a youth who is alleged or found to be a youth in need of
21 supervision intervention or a delinquent youth are a public record until the record is sealed under 41-5-604."

22

23 **Section 46.** Section 41-5-802, MCA, is amended to read:

24 **"41-5-802. Shelter care facilities.** (1) Counties, cities, or nonprofit corporations may provide by
25 purchase, lease, or otherwise, a shelter care facility.

26 (2) A shelter care facility may be used to provide an appropriately physically restricting setting for
27 youth alleged or adjudicated to be a delinquent youth, a youth in need of supervision intervention, or a
28 youth in need of care.

29 (3) A shelter care facility must be physically separated from any facility housing adults accused
30 or convicted of criminal offenses.

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

3 (5) A shelter care facility must be furnished in a comfortable manner.

4 (6) A shelter care facility may be operated in conjunction with a youth detention facility."
5

6 **Section 47.** Section 41-5-1004, MCA, is amended to read:

7 **"41-5-1004. Distribution of grants -- limitation of funding -- restrictions on use.** (1) The board shall
8 award grants on an equitable basis, giving preference to services that ~~will~~ are to be used on a regional
9 basis.

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

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

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

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

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

18 (3) Based on funding available after the board has funded block grants under subsection (2), the
19 board shall, in cases of extreme hardship in which the transfer of youth court cases to the adult system
20 has placed considerable financial strain on a county's resources, award grants to eligible counties to fund
21 up to 75% of the actual costs of secure detention of youth awaiting transfer. Hardship cases will be
22 addressed at the end of the fiscal year and will be awarded by the board based upon a consideration of the
23 applicant county's past 3 years' expenditures for youth detention and upon consideration of the particular
24 case or cases that created the hardship expenditure for which the hardship grant is requested.

25 (4) Grants under 41-5-1002 may not be used to pay for the cost of youth evaluations. The cost
26 of evaluations must be paid as provided for in ~~41-5-523~~ [section 37]."
27

28 **Section 48.** Section 41-5-1008, MCA, is amended to read:

29 **"41-5-1008. Rulemaking authority.** The board may adopt rules necessary to implement the
30 provisions of ~~41-5-103(13)~~, 41-5-812, and 41-5-1001 through 41-5-1008 and to establish requirements

1 for approved holdovers consistent with the definition of holdover provided in 41-5-103."

2

3 **Section 49.** Section 41-5-1104, MCA, is amended to read:

4 **"41-5-1104. Disposition in extended jurisdiction prosecutions.** (1) If a youth in an extended
5 jurisdiction prosecution pleads guilty to or is found guilty of an offense described in 41-5-1102(1)(b), the
6 court shall:

7 (a) impose one or more juvenile dispositions under 41-5-523 or [section 32]; and

8 (b) impose an adult criminal sentence, the execution of which must be stayed on the condition that
9 the youth not violate the provisions of the disposition order and not commit a new offense. If the youth
10 violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed
11 as provided in 41-5-1105.

12 (2) Except as provided in subsection (3), if a youth in an extended jurisdiction prosecution is
13 convicted of an offense not described in 41-5-1102(1)(b), the court shall adjudicate the youth delinquent
14 and order a disposition under ~~41-5-523~~ [section 32].

15 (3) If a youth in an extended jurisdiction prosecution pleads guilty to an offense not described in
16 41-5-1102(1)(b), the court may impose, with the youth's consent, a disposition provided under subsection
17 (1)(b) of this section. If the youth does not consent to disposition under subsection (1)(b), the court shall
18 impose a disposition as provided under subsection (2)."

19

20 **Section 50.** Section 41-5-1105, MCA, is amended to read:

21 **"41-5-1105. Execution of adult sentence -- exception -- transfer to district court.** (1) If a court
22 has imposed on a youth an adult criminal sentence stayed under 41-5-1104(1)(b) and the youth violates
23 the conditions of the stay or is alleged to have committed a new offense, the court may, without notice,
24 direct that the youth be taken into immediate custody and revoke the stay. The court shall notify the youth
25 in writing of the reasons for the revocation.

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

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

30 (i) order execution of the sentence imposed under 41-5-1104(1)(b); or

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

3 (3) If the stay of an adult sentence is revoked under this section, jurisdiction must be transferred
4 to district court for execution of the sentence, subject to ~~41-5-206(8) and (9)~~ 41-5-206(4) and (5)."

5
6 **Section 51.** Section 45-5-624, MCA, is amended to read:

7 **"45-5-624. Unlawful attempt to purchase or possession of an intoxicating substance --**
8 **interference with sentence or court order.** (1) A person under ~~the age of~~ 21 years of age commits the
9 offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's
10 possession an intoxicating substance. The person need not be consuming or in possession of the
11 intoxicating substance at the time of arrest to violate this subsection. A person does not commit the
12 offense if the person consumes or gains possession of the beverage because it was lawfully supplied to
13 the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic
14 beverages.

15 (2) In addition to any disposition by the youth court under 41-5-523, a person under 18 years of
16 age who is convicted of the offense of possession of an intoxicating substance shall:

17 (a) for the first offense, be fined an amount not to exceed \$100 and:

18 (i) have the person's driver's license confiscated by the court for not less than 30 days and not
19 more than 90 days and be ordered not to drive during that period if the person was driving or was
20 otherwise in actual physical control of a motor vehicle when the offense occurred;

21 (ii) be ordered to perform community service if a community service program is available; and

22 (iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered
23 community service, if any is available, all costs of participation in a community-based substance abuse
24 information course, if one is available;

25 (b) for a second offense, be fined an amount not to exceed \$200 and:

26 (i) have the person's driver's license suspended for not less than 60 days and not more than 120
27 days;

28 (ii) be ordered to perform community service if a community service program is available; and

29 (iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered
30 community service, if any is available, all costs of participation in a community-based substance abuse

1 information course, if one is available;

2 (c) for a third or subsequent offense, be fined an amount not less than \$300 or more than \$500
3 and:

4 (i) have the person's driver's license suspended for not less than 120 days and not more than 1
5 year, except that if the person was driving or was otherwise in actual physical control of a motor vehicle
6 when the offense occurred, have the person's driver's license revoked for 1 year or until the person reaches
7 the age of 18, whichever occurs last;

8 (ii) be ordered to complete and pay, either directly with money or indirectly through court-ordered
9 community service, if any is available, all costs of participation in a community-based substance abuse
10 information course, if one is available, which may include alcohol or drug treatment, or both, approved by
11 the department of corrections, if determined by the court to be appropriate.

12 (3) A person 18 years of age or older who is convicted of the offense of possession of an
13 intoxicating substance shall:

14 (a) for a first offense, be fined an amount not to exceed \$50 and be ordered to perform community
15 service if a community service program is available;

16 (b) for a second offense, be fined an amount not to exceed \$100 and:

17 (i) be ordered to perform community service if a community service program is available; and

18 (ii) have the person's driver's license suspended for not more than 60 days if the person was driving
19 or otherwise in actual physical control of a motor vehicle when the offense occurred;

20 (c) for a third or subsequent offense, be fined an amount not to exceed \$200 and:

21 (i) be ordered to perform community service if a community service program is available;

22 (ii) have the person's driver's license suspended for not more than 120 days if the person was
23 driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

24 (iii) be ordered to complete an alcohol information course at an alcohol treatment program approved
25 by the department of corrections, which may, in the sentencing court's discretion and upon
26 recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both;
27 and

28 (iv) in the discretion of the court be imprisoned in the county jail for a term not to exceed 6 months.

29 (4) A person under ~~the age of 21~~ years of age commits the offense of attempt to purchase an
30 intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person

1 convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed \$50
2 if the person was 18 years of age or older at the time the offense was committed or \$100 if the person
3 was under 18 years of age at the time that the offense was committed.

4 (5) A defendant who fails to comply with a sentence and is under 21 years of age and was under
5 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings
6 for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged
7 youth in need of ~~supervision~~ intervention as defined in 41-5-103. The youth court may enter its judgment
8 under 41-5-523.

9 (6) A person commits the offense of interference with a sentence or court order if the person
10 purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section
11 or a youth court disposition order for a youth found to have violated this section and upon conviction shall
12 be fined \$100 or imprisoned in the county jail for 10 days, or both.

13 (7) A conviction or youth court adjudication under this section must be reported by the court to
14 the department of justice under 61-11-101 for the purpose of keeping a record of the number of offenses
15 committed but may not be considered part of the person's driving record for insurance purposes unless a
16 second or subsequent conviction or adjudication under this section occurs. (See compiler's comments for
17 contingent termination of certain text.)"

18
19 **Section 52.** Section 45-5-637, MCA, is amended to read:

20 **"45-5-637. Tobacco possession or consumption by persons under 18 years of age prohibited --**
21 **penalties.** (1) A person under 18 years of age who knowingly possesses or consumes a tobacco product,
22 as defined in 16-11-302, commits the offense of possession or consumption of a tobacco product.

23 (2) A person convicted of possession or consumption of a tobacco product:

24 (a) shall be fined \$35 for a first offense, no less than \$75 or more than \$100 for a second offense,
25 and no less than \$100 or more than \$250 for a third or subsequent offense; or

26 (b) may be adjudicated on a petition alleging the person to be a youth in need of ~~supervision~~
27 intervention under the provisions of the Montana Youth Court Act provided for in Title 41, chapter 5.

28 (3) A person convicted of possession or consumption of a tobacco product may also be required
29 to perform community service or to attend a tobacco cessation program.

30 (4) The fines collected under subsection (2) must be deposited to the credit of the general fund of

1 the local government that employs the arresting officer, or if the arresting officer is an officer of the
2 highway patrol, the fines must be credited to the county general fund in the county in which the arrest was
3 made."

4
5 **Section 53.** Section 46-18-256, MCA, is amended to read:

6 **"46-18-256. Sexually transmitted disease testing -- test procedure.** (1) Following entry of
7 judgment, a person convicted of a sexual offense, as defined in 46-23-502, must, at the request of the
8 victim of the sexual offense or the parent or guardian of the victim, if the victim is a minor, be administered
9 standard testing according to currently accepted protocol, using guidelines established by the centers for
10 disease control, U.S. department of health and human services, to detect in the person the presence of
11 antibodies indicative of the presence of human immunodeficiency virus (HIV) or other sexually transmitted
12 diseases, as defined in 50-18-101.

13 (2) Arrangements for the test required by subsection (1) must be made by the county attorney of
14 the county in which the person was convicted. The test must be conducted by a health care provider, as
15 defined in 50-16-504.

16 (3) The county attorney of the county in which the person was convicted shall release the
17 information concerning the test results to:

18 (a) the convicted person; and

19 (b) the victim of the offense committed by the convicted person or to the parent or guardian of the
20 victim if the victim is a minor.

21 (4) At the request of the victim of a sexual offense or the parent or guardian of the victim if the
22 victim is a minor, the victim must be provided counseling regarding HIV disease, HIV testing (in accordance
23 with applicable law), and referral for appropriate health care and support services.

24 (5) For purposes of this section, "convicted" includes an adjudication, under the provisions of
25 41-5-521, finding a youth to be a delinquent youth or a youth in need of ~~supervision~~ intervention.

26 (6) The provisions of the AIDS Prevention Act, Title 50, chapter 16, part 10, do not apply to this
27 section."

28
29 **Section 54.** Section 46-24-207, MCA, is amended to read:

30 **"46-24-207. Victims and witnesses of juvenile felony offenses -- consultation -- notification of**

1 **proceedings.** (1) The attorney general shall ensure that the services and assistance that must be provided
2 ~~under this chapter Title 46, chapter 24,~~ to a victim or witness of a crime are also provided to the victim
3 or witness of a juvenile felony offense.

4 (2) In a proceeding filed under Title 41, chapter 5, part 5, the county attorney or a designee shall
5 consult with the victim of a juvenile felony offense ~~or, in the case of a minor victim or a homicide victim,~~
6 ~~with the victim's family~~ regarding the disposition of the case, including:

7 (a) a dismissal of the petition filed under 41-5-501;

8 (b) a reduction of the charge to misdemeanor;

9 (c) the release of the youth from detention or shelter care pending the adjudicatory hearing; and

10 (d) the disposition of the youth.

11 (3) (a) Whenever possible, a person described in subsection (3)(b) who provides the youth court
12 with a current address and telephone number must receive prompt advance notification of youth court case
13 proceedings, including:

14 (i) the filing of a petition under 41-5-501;

15 (ii) the release of the youth from detention or shelter care; and

16 (iii) proceedings in the adjudication of the petition, including, when applicable, entry of a consent
17 decree under 41-5-524, the setting of a date for the adjudicatory hearing under 41-5-521, the setting of
18 a date for the dispositional hearing under 41-5-522, the disposition made, and the release of the youth from
19 a youth correctional facility.

20 (b) A person entitled to notification under this subsection (3) must be a victim, as defined in
21 41-5-103, of a juvenile felony offense, ~~an adult relative of the victim if the victim is a minor, or an adult~~
22 ~~relative of a homicide victim.~~

23 (c) The county attorney or a designee that provides the consultation regarding the disposition of
24 a case required in subsection (2) shall give the victim the opportunity to provide the victim's current
25 telephone number and address and shall forward the information to the youth court for notification purposes
26 under this subsection (3).

27 (d) The court shall provide to the department of justice the list of people entitled to notification
28 under this subsection (3), and the department of justice is responsible to provide the notification.

29 (4) For purposes of this section, "juvenile felony offense" means an offense committed by a
30 juvenile that, if committed by an adult, would constitute a felony offense. The term includes any offense

1 for which a juvenile may be declared a serious juvenile offender, as defined in 41-5-103."

2
3 **Section 55.** Section 52-2-211, MCA, is amended to read:

4 **"52-2-211. County interdisciplinary child information team.** (1) The following persons and agencies
5 operating within a county may by written agreement form a county interdisciplinary child information team:

- 6 (a) the youth court;
- 7 (b) the county attorney;
- 8 (c) the department of public health and human services;
- 9 (d) the county superintendent of schools;
- 10 (e) the sheriff;
- 11 (f) the chief of any police force;
- 12 (g) the superintendents of public school districts; and
- 13 (h) the department of corrections.

14 (2) The persons and agencies signing a written agreement under subsection (1) may by majority
15 vote allow the following persons to sign the written agreement and join the ~~information~~ team:

- 16 (a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental
17 health care;
- 18 (b) entities operating private elementary and secondary schools;
- 19 (c) attorneys; and
- 20 (d) a person or entity that has or may have a legitimate interest in one or more children that the
21 ~~information~~ team will serve.

22 (3) (a) The members of the ~~information~~ team or their designees may form one or more auxiliary
23 teams for the purpose of providing service to a single child, a group of children, or children with a particular
24 type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

25 (b) A member of an auxiliary team must be a person who has personal knowledge of or experience
26 with the child or children in the member's respective field.

27 (4) The purpose of the team and written agreement is to facilitate the exchange and sharing of
28 information that one or more team members may be able to use in serving a child in the course of their
29 professions and occupations, including but not limited to abused, or neglected, ~~and delinquent~~ children,
30 delinquent youth, and youth in need of ~~supervision~~ intervention. Information regarding a child that a team

1 member supplies to other team members or that is disseminated to a team member under 41-3-205 or
2 41-5-603(2) may not be disseminated beyond the team.

3 (5) The terms of the written agreement must provide for the rules under which the team will
4 operate, the method by which information will be shared, distributed, and managed, and any other matters
5 necessary to the purpose and functions of the team.

6 (6) The terms of the written agreement must state how the team will coordinate its efforts with
7 interdisciplinary child protective teams as provided in 41-3-108 and youth placement committees as
8 provided for in 41-5-525."

9

10 **Section 56.** Section 52-5-101, MCA, is amended to read:

11 **"52-5-101. Establishment of state youth correctional facilities -- prohibitions.** (1) The department
12 of corrections, within the annual or biennial budgetary appropriation, may establish, maintain, and operate
13 facilities to properly diagnose, care for, train, educate, and rehabilitate youth in need of these services. The
14 youth must be 10 years of age or older and under 19 years of age. The facilities include but are not limited
15 to ~~the state youth correctional facilities at the Mountain View school in Helena and the Pine Hills school~~
16 in Miles City.

17 (2) A youth alleged or found to be a youth in need of ~~supervision~~ intervention may not be placed
18 in a state youth correctional facility as defined in 41-5-103."

19

20 **Section 57.** Section 52-5-107, MCA, is amended to read:

21 **"52-5-107. Maximum age of commitment.** A ~~child~~ youth who has attained ~~the age of 18 years~~
22 of age may not be committed by any youth court to the department of corrections, ~~except, however, that~~
23 ~~any person under 19 years who prior to attaining the age of 18 years came under the jurisdiction of the~~
24 ~~youth court by reason of delinquent conduct and whose adjudication of delinquency is not made until after~~
25 ~~the child reaches the age of 18 years may be committed to the department of corrections."~~

26

27 **Section 58.** Section 52-5-113, MCA, is amended to read:

28 **"52-5-113. Apprehension and return of youth leaving youth correctional facility without**
29 **permission.** A youth who has left a youth correctional facility of or a program operated by or contracted
30 with the department of corrections without permission may be apprehended and returned by any citizen.

1 The term "~~youth correctional facility of the department~~" means any facility under the supervision and
 2 control of the department of corrections that has as its primary function the care, training, custody, and
 3 control of youth and specifically includes the Pine Hills school for boys and the Mountain View school for
 4 girls. The department may publish the youth's name, picture, offense, and other information that may
 5 facilitate the youth's return or protect the public."

6
 7 **Section 59.** Section 52-5-126, MCA, is amended to read:

8 "**52-5-126. ~~Youth aftercare~~ Juvenile parole agreement.** (1) A youth released by the department
 9 of corrections from one of the state youth correctional facilities to the supervision, custody, and control
 10 of the department shall, before the youth's release, sign ~~an aftercare~~ a juvenile parole agreement
 11 containing:

12 (a) a statement of the terms and conditions of the release, including a list of the acts that, if
 13 committed by the youth, may result in a return to the facility; and

14 (b) a statement that if the department or any person alleges any violation of the terms and
 15 conditions of the agreement, the youth is entitled to a hearing as provided for in 52-5-129 before being
 16 returned to the facility.

17 (2) A youth released from a state youth correctional facility for commitment to a mental health
 18 facility pursuant to Title 53, chapter 21, part 1, shall sign an ~~aftercare~~ agreement that will remain in effect
 19 until the department no longer has custody of the youth."

20
 21 **Section 60.** Section 52-5-127, MCA, is amended to read:

22 "**52-5-127. ~~Control over youth released under aftercare~~ juvenile parole agreement.** The department
 23 of corrections has control over a youth released pursuant to a juvenile parole agreement under 52-5-126
 24 until the youth attains the age of 19 years unless the youth is discharged by the department before age 19.
 25 However, the youth is subject to the continuing jurisdiction of the youth courts of Montana, pursuant to
 26 41-5-205, for acts committed by the youth while under the control of the department."

27
 28 **Section 61.** Section 52-5-128, MCA, is amended to read:

29 "**52-5-128. ~~Detention of youth who violates aftercare~~ juvenile parole agreement.** A youth who
 30 violates the terms and conditions of the youth's ~~aftercare~~ juvenile parole agreement or who escapes from

1 a youth correctional facility or program may be detained by the department of corrections or by a law
 2 officer of the state, county, or city of the state upon ~~certificates~~ notice in writing to the officer by the
 3 department to the effect that the youth has violated the terms and conditions of the youth's ~~aftercare~~
 4 juvenile parole agreement or has escaped."

5
 6 **Section 62.** Section 52-5-129, MCA, is amended to read:

7 **"52-5-129. Hearing on alleged violation of ~~aftercare~~ juvenile parole agreement -- right to appeal**
 8 **outcome.** (1) When it is alleged by an ~~aftercare counselor~~ a juvenile probation officer that a youth has
 9 violated the terms of the youth's ~~aftercare~~ juvenile parole agreement, the youth must be granted a hearing
 10 at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days
 11 after notice has been served on the youth or the youth is detained, whichever is earlier. At the discretion
 12 of the hearings officer, the hearing may be held by means of interactive video transmission. The purpose
 13 of the hearing is to determine whether the youth committed the violation and, if so, whether the violation
 14 is of such a nature that the youth should be returned to the youth correctional facility from which the youth
 15 was released or a different plan for ~~treatment~~ custody and supervision of the youth should be pursued by
 16 the department of corrections.

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

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

19 (a) written notice of the alleged violation of the ~~aftercare~~ juvenile parole agreement, including notice
 20 of the purpose of the hearing;

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

22 (c) opportunity to be heard in person or by interactive video transmission and to present witnesses
 23 and documentary evidence to controvert the evidence against the youth and to show that there are
 24 compelling reasons that justify or mitigate the violation;

25 (d) opportunity to have the ~~referee~~ hearings officer subpoena witnesses;

26 (e) the right to confront and cross-examine adverse witnesses in person or by means of interactive
 27 video transmission;

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~~ hearings officer.

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

6 (5) If the ~~referee~~ hearings officer finds, by a preponderance of the evidence, that the youth did in
7 fact commit the violation, the ~~referee~~ hearings officer shall make a recommendation to the department for
8 the placement of the youth. In making this recommendation, the ~~referee~~ hearings officer may consider
9 mitigating circumstances. ~~Final approval rests with the department and~~ The youth or the youth's attorney
10 may appeal the hearings officer's decision to the department director. The appeal must be made within 40
11 5 days of the referee's recommendation. The department director or the director's designee must grant
12 or deny the appeal within 5 days of receipt of the appeal.

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

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

26 (8) If the decision is made to return the youth to the youth correctional facility from which the
27 youth was released and the youth appeals that decision, the youth shall await the outcome of the appeal
28 at the facility."

29

30 **Section 63.** Section 53-1-201, MCA, is amended to read:

1 **"53-1-201. Purpose of department of corrections.** The department of corrections shall ~~utilize~~ use
2 at maximum efficiency the resources of state government in a coordinated effort to:

3 (1) develop and maintain comprehensive services and programs in the field of adult and youth
4 corrections; and

5 (2) provide for the care, protection, and mental and physical development of youth alleged to be
6 youth in need of ~~supervision~~ intervention or delinquent youth who are referred or committed to the
7 department."

8
9 **Section 64.** Section 53-1-203, MCA, is amended to read:

10 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections
11 shall:

12 (a) adopt rules necessary to carry out the purposes of 41-5-527 through 41-5-529 and rules for
13 the admission, custody, transfer, and release of persons in department programs except as otherwise
14 provided by law. However, rules adopted by the department may not amend or alter the statutory powers
15 and duties of the state board of pardons and parole.

16 (b) subject to the functions of the department of administration, lease or purchase lands for use
17 by institutions and classify those lands to determine those that may be most profitably used for agricultural
18 purposes, taking into consideration the needs of all institutions for the food products that can be grown
19 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation
20 of the persons confined in the institutions;

21 (c) contract with private, nonprofit Montana corporations to establish and maintain
22 community-based prerelease centers for purposes of preparing inmates of the Montana state prison who
23 are approaching parole eligibility or discharge for release into the community. The centers shall provide a
24 less restrictive environment than the prison while maintaining adequate security. The centers must be
25 operated in coordination with other department correctional programs, including the supervised release
26 program provided for in Title 46, chapter 23, part 4. This subsection does not affect the department's
27 authority to operate and maintain community-based prerelease centers.

28 (d) utilize the staff and services of other state agencies and units of the Montana university system,
29 within their respective statutory functions, to carry out its functions under this title;

30 (e) propose programs to the legislature to meet the projected long-range needs of institutions,

1 including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in
2 institutions;

3 (f) encourage the establishment of programs at the local and institutional level for the rehabilitation
4 and education of adult felony offenders;

5 (g) administer all state and federal funds allocated to the department for youth in need of
6 ~~supervision~~ intervention and delinquent youth, as defined in 41-5-103;

7 (h) collect and disseminate information relating to youth in need of ~~supervision~~ intervention and
8 delinquent youth;

9 (i) maintain adequate data on placements that it funds in order to keep the legislature properly
10 informed of the specific information, by category, related to youth in need of ~~supervision~~ intervention and
11 delinquent youth in out-of-home care facilities;

12 (j) provide funding for and place youth who are alleged or adjudicated to be delinquent or in need
13 of ~~supervision~~ intervention and who are referred or committed to the department;

14 (k) administer youth correctional facilities;

15 (l) provide supervision, care, and control of youth released from a state youth correctional facility;
16 and

17 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

18 (i) provide for children in need of temporary protection or correctional services; and

19 (ii) coordinate and apply the principles of modern institutional administration to the institutions in
20 the department.

21 (2) The department and a private, nonprofit Montana corporation may not enter into a contract
22 under subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-3-104 and 18-4-313 that
23 limit the term of a contract do not apply to a contract authorized by subsection (1)(c).

24 (3) The department of corrections may enter into contracts with nonprofit corporations or
25 associations or private organizations to provide substitute care for youth in need of ~~supervision~~ intervention
26 and delinquent youth in youth care facilities."

27

28 NEW SECTION. Section 65. Repealer. Section 41-5-310, MCA, is repealed.

29

30 NEW SECTION. Section 66. Funding coordination. For the purposes of Title 1, chapter 2, part

1 1, the funding for this bill is contained in __ Bill No. __ [LC 228].

2
3 **NEW SECTION. Section 67. Directions to code commissioner.** Wherever a reference to "youth
4 in need of supervision" appears in the Montana Code Annotated or in legislation enacted by the 1997
5 legislature, the code commissioner is directed to change it to an appropriate reference to "youth in need
6 of intervention".

7
8 **NEW SECTION. Section 68. Codification instruction.** (1) [Sections 30 and 32 through 39] are
9 intended to be codified as an integral part of Title 41, chapter 5, and the provisions of Title 41, chapter 5,
10 apply to [sections 30 and 32 through 39].

11 (2) Section 46-24-207 is intended to be renumbered and codified as an integral part of Title 41,
12 chapter 5, part 5.

13
14 **NEW SECTION. Section 69. Saving clause.** [This act] does not affect rights and duties that
15 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
16 act].

17
18 **NEW SECTION. Section 70. Effective date.** [This act] is effective January 1, 1998.

19 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0138, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the youth court act; creating youth assessment placements; requiring the Department of Public Health and Human Services to license youth assessment placements.

ASSUMPTIONS:


Department of Corrections (DOC):


1. Assume assessment officers would be employed by the youth courts.
2. Assume DOC proposal to allocate approximately \$5.4 million of juvenile placement funds to Judicial Districts is approved.
3. Assessment services would then be funded via this allocation process as a part of the continuum of services offered to youth in need of intervention.
4. Habitual truant offenders deemed delinquent by this bill could dramatically increase. Every high school student who is truant for one day in a week could fall under this designation. The number of juveniles impacted by this definition change is uncertain.
5. Allowing county attorneys to file directly in District Court for certain offenses will likely increase the number of youth held in secure correctional facilities between the age of commission of crime and the age of 18. This fiscal impact is uncertain. The DOC legal unit has seen an increased interest in transferring juvenile offenders to District Court in the last year.
6. The DOC assumes that juveniles deemed delinquent by committing three or more misdemeanor offenses in a twelve month period will receive correctional services within the DOC proposed increase in capacity of Pine Hills, the female juvenile facility, community transition centers and parole supervision.
7. The DOC assumes that the increase in transfers of juveniles to the adult correctional system will be minimal. Therefore the DOC assumes no fiscal impact due to this change.

Department of Public Health and Human Services (DPHHS):

8. A contract for services will be necessary to prepare the licensing rules and policies. The contract will require full time effort for 3 months. The cost of the contract is estimated based on the salary for an entry level position at grade 16 (\$29,607/2,080 hours per year = \$14.23 per hour), and is assumed to cover 520 hours of effort (2,080/4). This yields a total cost for the contract of \$7,400 (\$14.23 X 520) in fiscal 1998.
9. Licensing for youth placement facilities or foster families and associated workloads will require 4.00 FTE at grade 14. The FTE will be hired in fiscal 1998 after the completion of the licensing standards.
10. Two changes to the Child and Adult Protective Services (CAPS) computer system will be necessary in fiscal year 1998 to accommodate a new license type, at a cost of \$5,200.
11. Each FTE will require a personal computer (\$2,500), office supplies and furniture (\$500), and operating costs for network fees (\$40 per month). The computers and office supplies and furniture will be purchased in fiscal 1998. Network fees will total \$1,440 in fiscal 1998 (\$40 X 9 months X 4.00 FTE) and \$1,920 in fiscal 1999 (\$40 X 12 months X 4.00 FTE).
12. With the exception of the CAPS changes, which are funded 50% general fund and 50% federal funds, all other costs would be funded 80% general fund and 20% federal Title IV-E funds.

(Continued)


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


ROYAL JOHNSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0138, as introduced

HB 138

Department of Justice (DOJ):

13. Section 54 of the bill clarifies a 1995 amendment to § 46-24-207, MCA, which provided for notice of proceedings to victims and witnesses of juvenile offenses. The 1995 amendment stated that "the department" was to provide such notice, but did not specify what department.
14. HB 138 specifies that it is the DOJ that is to give notification of proceedings to victims and witnesses of juvenile offenses.
15. The DOJ does not now, nor has it in the past, given notice to victims of all proceedings in juvenile cases or, for that matter, in adult cases. Because most proceedings occur in the youth courts at the county level, the department does not have ready access to information and is not given notice of the filing of a petition under 41-5-501, MCA, the release of the youth from detention or shelter care, or other proceedings in the adjudication of the petition, unless and until there is an appeal in the case, which occurs in fewer than a majority of juvenile cases.
16. If HB 138 is passed in the form in which it is introduced, the DOJ will be required to set up an information system through the 56 county attorneys' offices or the clerks of court, and through the DOC, to obtain the information that must be provided to victims.
17. The DOJ estimates that there are approximately 2,000 juvenile offenses committed each year in Montana that would be felonies if committed by adults and therefore subject to the notice provisions of section 46-24-207, MCA.
18. DOJ would need 1.00 FTE, grade 10, at an annual cost of \$23,596 to perform the notification. Annual operating costs are estimated at \$4,049 a year (supplies, communications, travel, rent, and data network connections).

Additional operating costs of \$10,580 are needed in fiscal 1998 only to hire a consultant to analyze the project, contact the district courts and youth courts to determine how to set up the notification process. (Estimated 4 months of a grade 15 time minus the \$2700 insurance). Then programming costs of \$5,000 (fiscal year 1998 only) are estimated to develop the program. Equipment will need to be purchased in fiscal 1998 for a one-time cost of \$5,550 (desk, chair, computer, file cabinets, fax).

Office of Public Instruction (OPI):

19. Section 34 of HB 138 states that "A youth who, before placement or sentencing, is found to be mentally ill, as defined in 41-5-103, or seriously mentally ill, as defined in 53-21-102, may not be committed or sentenced to a state youth correctional facility." Recent court decisions also prevent youth who are mentally ill from being placed in Pine Hills or the Aspen program. The number of placements in in-state and out-of-state residential treatment facilities is likely to increase in response to the court decisions. The requirements of Section 34 will not create an additional burden.
20. The OPI pays a maximum of \$10,900 annually (\$48/day for 227 days) per child for the educational costs related to in-state residential treatment.
21. There is no impact on state funding for education-related services.

Judiciary:

22. There is no fiscal impact on the Judiciary.

FISCAL IMPACT:

Department of Corrections:

There is \$5.4 million for juvenile placement plus expansion of Pine Hills and development of the female juvenile facility included in the Executive Budget.

	<u>FY98</u>	<u>FY99</u>
Department of Public Health and Human Services:	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
FTE	3.00	4.00
Personal Services	87,406	116,541
Operating Costs	14,040	1,920
Equipment	<u>12,000</u>	<u>0</u>
Total 03	113,446	118,461

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Funding:</u>		
General Fund (01)	89,197	94,769
Federal Funds	<u>24,249</u>	<u>23,692</u>
Total	113,446	118,461
 <u>Department of Justice:</u>		
<u>Expenditures:</u>		
FTE	1.00	1.00
Personal Services	23,596	23,596
Operating costs	14,629	4,049
Program development (one time)	5,000	0
Equipment (one time)	<u>5,550</u>	<u>0</u>
Total	48,775	27,645
 <u>Funding:</u>		
General Fund (01)	48,775	27,645
 <u>Net Impact on Fund Balance: (Revenue minus Expenses)</u>		
General Fund (01)	(137,972)	(122,414)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Additional responsibility to notify the Identification Bureau of the Department of Justice on the status of petitions filed, case status and offender release.

TECHNICAL NOTES:

1. SB 48 has similar notification responsibilities for the Department of Justice. If both SB 48 and HB 138 pass, the Department of Justice only needs the costs stated in one of the bills. It should not be doubled.
2. Educational services are a constitutional right for school-age children. This bill does not address how educational services will be provided or guaranteed to students placed in a secure facility for assessment (up to ten days).