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INTRODUCED BY

House BILL NO. 261
Brad Molnar

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A YOUTH COURT TO ORDER RESTITUTION BY A PERSON CONTRIBUTING TO A YOUTH'S DELINQUENCY OR NEED FOR SUPERVISION; REQUIRING THE DEPARTMENT OF CORRECTIONS TO SUPERVISE OR TO DESIGNATE AN APPROPRIATE PERSON OR ENTITY TO SUPERVISE A YOUTH WHO SIGNS AN AFTERCARE AGREEMENT OR IS PLACED ELSEWHERE THAN IN A FACILITY OR PROGRAM OPERATED BY THE DEPARTMENT; REVISING INCOME WITHHOLDING AS A MEANS OF PAYMENT TOWARD THE COSTS OF A YOUTH'S DELINQUENCY OR SUPERVISION BY A PARENT OR GUARDIAN; REQUIRING THE COURT TO EXAMINE A PERSON'S ABILITY TO PAY; PROVIDING THAT A LAW ENFORCEMENT OFFICER MAY BE A PROBATION OFFICER; ABOLISHING CHIEF PROBATION OFFICER QUALIFICATIONS; GIVING PROBATION OFFICERS THE POWER TO ARREST AND TO PERFORM OTHER LAW ENFORCEMENT FUNCTIONS RELATED TO THEIR WORK; MAKING PROBATION OFFICERS RESPONSIBLE FOR ENFORCING TERMS OF PROBATION AND SUPERVISION AND FOR IMPLEMENTING YOUTH COMMUNITY AND WORK PROGRAMS TO HELP DEFRAY THE COSTS OF DELINQUENCY AND SUPERVISION; REMOVING THE LIMIT ON THE NUMBER OF YOUTH DETENTION REGIONS; AND AMENDING SECTIONS 41-5-523, 41-5-701, 41-5-702, 41-5-703, AND 41-5-812, MCA."

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

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

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

- (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);
- (b) place the youth on probation;
- (c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years

1 of age. A youth may not be sentenced to a state youth correctional facility unless the department informs
2 the judge that space is available for the youth at that facility. The sentencing judge may not place
3 limitations on the release unless recommended by the youth placement committee.

4 (d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and
5 46-23-506;

6 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides
7 for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider
8 placement recommendations from the youth placement committee. The judge may not place the youth in
9 an in-state residence unless the department informs the judge that resources are available for placement
10 of the youth at that residence.

11 (f) commit the youth to the department. In an order committing a youth to the department:

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

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

21 (g) order restitution by the youth, ~~or the youth's parents,~~ or a person who contributed to the
22 youth's delinquency or need for supervision;

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

25 (i) require the performance of community service;

26 (j) require the youth, the youth's parents or guardians, or the persons having legal custody of the
27 youth to receive counseling services;

28 (k) require the medical and psychological evaluation of the youth, the youth's parents or guardians,
29 or the persons having legal custody of the youth;

30 (l) require the parents, guardians, or other persons having legal custody of the youth to furnish

1 services the court may designate;

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

7 (n) commit the youth to a mental health facility if, based upon the testimony of a professional
8 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in
9 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

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

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

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

16 (2) When a youth is committed to the department, the department shall determine the appropriate
17 placement and rehabilitation program for the youth after considering the recommendations made under
18 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

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

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

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

27 (3) A youth placed in a state youth correctional facility or other facility or program operated by the
28 department or who signs an aftercare agreement under 52-5-126 must be supervised by the department.
29 A youth who is placed in any other placement by the department, the youth court, or the youth court's
30 juvenile probation officer must be supervised by the ~~probation officer of the youth court having jurisdiction~~

1 ~~over the youth under 41-5-206 whether or not the youth is committed to the department or by an~~
2 ~~appropriate person or entity designated by the department. Supervision by the youth probation officer~~
3 includes but is not limited to:

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

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

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

9 (d) case management of the youth.

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

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

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

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

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

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

29 (10) If a youth is committed to the department, the court ~~shall~~ may examine the financial ability of
30 the youth's parents or guardians to pay a contribution covering all or part of the costs for the care,

1 commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health
2 care.

3 (11) If the court determines that the youth's parents or guardians are financially able to pay a
4 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay
5 an amount ~~based on the uniform child support guidelines adopted by the department of public health and~~
6 ~~human services pursuant to 40-5-209~~ determined after the department conducts an investigation of ability
7 to pay and discusses the matter with, and reaches a payment agreement with, the parents or guardians.
8 If an agreement cannot be reached, the court shall determine the amount to be paid.

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

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

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

18 ~~(ii) an alternative arrangement between the department and the person who is ordered to pay~~
19 ~~contributions.~~

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

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

24 ~~(ii) proof of timely payment of previously ordered support in cases involving modification of~~
25 ~~contributions ordered under this section.~~

26 ~~(d) An alternative arrangement must:~~

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

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

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

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

3 ~~(14)~~(13) (a) If the court orders the payment of contributions under this section, the department shall
4 apply to the department of public health and human services for support enforcement services pursuant
5 to Title IV-D of the Social Security Act.

6 (b) The department of public health and human services may collect and enforce a contribution
7 order under this section that has not been timely paid by any means available under law, including the
8 remedies provided for in Title 40, chapter 5, parts 2 and 4."
9

10 **Section 2.** Section 41-5-701, MCA, is amended to read:

11 "**41-5-701. Appointment of probation officers.** The youth court judge of each judicial district shall
12 appoint ~~such necessary~~ probation officers as are required to carry out the purpose and intent of this
13 chapter. ~~He~~ The judge shall appoint ~~such~~ part-time probation officers as ~~shall be~~ required. The qualifications
14 for part-time probation officers must approximate those required for probation officers insofar as possible.
15 A chief probation officer must be appointed by the judge to supervise the youth division offices in the
16 judicial district. The judge shall also ~~insure~~ ensure that the youth division offices are staffed with necessary
17 office personnel and that the offices are properly equipped to effectively carry out the purpose and intent
18 of this chapter. ~~No person while serving as a law enforcement officer may be appointed or perform the~~
19 ~~duties of a full-time or part-time probation officer."~~

20

21 **Section 3.** Section 41-5-702, MCA, is amended to read:

22 "**41-5-702. Qualifications of probation officers.** (1) ~~Any person appointed as a chief probation~~
23 ~~officer must have the following qualifications:~~

24 ~~(a) a master's degree in the behavioral sciences;~~

25 ~~(b) a bachelor's degree from an accredited college or university in the behavioral sciences and at~~
26 ~~least 1 year's experience in work of a nature related to the duties of a probation officer as set forth in~~
27 ~~41-5-703; or~~

28 ~~(c) a bachelor's degree in any field and at least 3 years' experience in work related to the duties~~
29 ~~of a probation officer as set forth in 41-5-703.~~

30 ~~(2)~~ The judge may appoint any reputable person as a probation officer who has had experience in

1 work of a nature related to the duties of a chief probation officer, ~~provided preference must be given to~~
 2 ~~persons with the qualifications set forth in subsection (1).~~

3 ~~(3)(2)~~ Each person appointed as a chief probation officer or probation officer under this section or
 4 as a deputy probation officer under 41-5-705 ~~must~~ shall obtain 16 hours a year of training in subjects
 5 relating to the powers and duties of probation officers in a program or course conducted by the department
 6 of justice or approved by the board of crime control under 41-5-706."

7

8 **Section 4.** Section 41-5-703, MCA, is amended to read:

9 **"41-5-703. Powers and duties of probation officers.** (1) A probation officer shall:

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

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

12 (c) supervise, assist, and counsel youth placed on probation or under ~~his~~ the probation officer's
 13 supervision, including enforcement of the terms of probation or supervision;

14 (d) implement and maintain public and private community and work projects engaged in by youth
 15 to pay off fines, make restitution, and pay any other costs ordered by the court that are associated with
 16 youth delinquency or need for supervision;

17 ~~(d)~~(e) perform any other functions designated by the court.

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

21

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

23 **"41-5-812. Creation of regions -- requirements -- limitation on number of regions.** (1) Counties that
 24 wish to establish a regional detention facility shall form a youth detention region.

25 (2) Each youth detention region must:

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

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

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

-END-

- 7 -

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0261, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

Revising income withholding as a means of payment toward the costs of a youth's delinquency or supervision by a parent or guardian.

ASSUMPTIONS:

1. The Department of Corrections (DOC) would not be responsible to determine restitution amounts for persons deemed to have contributed to a youth's delinquency. Without historical data the DOC is unable to estimate the amount courts would order these persons to pay or the amount that would actually be collected from this source.
2. On 12/1/96 there were 268 youths in out of home placements funded by the DOC. Using fiscal year 1996 data, the DOC estimates that 83% of these youth were under supervision by juvenile probation officers. This bill would shift supervision of 222 youth to the DOC. The DOC would need 10.00 FTE juvenile probation officers (grade 14), 1.00 FTE probation officer supervisor (grade 18) and 2.00 FTE administrative support staff (grade 9). Operating costs of \$3,900 per year per FTE are included and computer/office equipment in fiscal year 1998 of \$4,962 per FTE.
3. This bill will remove the ability of the Child Support Enforcement Division (CSED) to collect parental contributions on behalf of the DOC. CSED would lose the ability to enforce contributions through income withholding, garnishment of income tax refunds, etc. for the DOC. The DOC is unable to calculate the loss in parental contributions due to this change. According to Department of Public Health and Human Services data, the CSED collected approximately \$37,000 in fiscal year 1996 for the DOC. There could be an offsetting effect of this change by giving the DOC the option to negotiate contributions with the parents. Currently, however, the DOC has no system to establish, monitor and collect these contributions.
4. Assumes that implementing and maintaining community work projects would be a duty of the youth courts under this bill.
5. Changing numbers of regional detention facilities will have no fiscal impact to DOC.
6. There is no impact to the Department of Justice.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE	13.00	13.00
Personal Services	406,425	406,425
Operating Expenses	50,700	50,700
Equipment	<u>64,506</u>	<u>0</u>
Total	521,631	457,125
 <u>Funding:</u>		
General Fund (01)	521,631	457,125

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

County costs incurred for juvenile probation should lessen as duties shift to the DOC.

TECHNICAL NOTES:

HB 261 changes 41-5-523, MCA, and eliminates use of the uniform child support guidelines as a method for computing financial contributions of parents for youth committed to DOC. This change and striking subsection 12 which contains required federal language for variance to the guidelines eliminates the ability of CSED to use child support enforcement methods and to receive federal financial participation in expenditures associated with this activity. These cases would not be Title IV-D eligible cases.

Dave Lewis 1-23-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

BRAD MOLNAR, PRIMARY SPONSOR DATE

Fiscal Note for HB0261, as introduced

HB 261