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INTRODUCED BY

House BILL NO. *279*
Dorell Christensen (Designated), Turso

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A YOUTH COURT OR OTHER COURT WITH JURISDICTION OVER A YOUTH TO ESTABLISH AN INFORMAL PEER COURT TO WHICH THE COURT MAY REFER A YOUTH FOR INFORMAL DISPOSITION; PROVIDING FOR OPERATION OF THE PEER COURT; AND AMENDING SECTIONS 41-5-301 AND 41-5-402, MCA."

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

NEW SECTION. Section 1. Consent disposition by peer court without petition. (1) Before a petition is filed with the youth court or before a complaint is filed with respect to a violation referred to in 41-5-203(2) and with the consent of the youth, the youth court or court referred to in 41-5-203(2) may refer the youth to an informal peer court if it appears that:

(a) facts admitted by the youth bring the case within the jurisdiction of the referring court; and
(b) counsel, advice, and a disposition by the peer court without filing a petition or complaint would be in the best interests of the youth and the public.

(2) A youth court or court referred to in 41-5-203(2) may establish a peer court to which youths may be referred by the court under subsection (1). Members of the peer court serve at the pleasure of the court that established it and are not entitled to compensation or expenses. The peer court shall operate under procedural rules established by the peer court. The court that established the peer court may advise the peer court on the rules. The peer court may make any reasonable disposition of the youth, except that it may not make a disposition convicting the youth of a crime or imposing a criminal penalty or requiring the expenditure of money by or supervision of the youth by a local or state government agency unless the agency consents to the disposition.

(3) A peer court disposition must be consented to by the youth, reduced to writing, and signed by the youth and the youth's parents or the person having legal custody of the youth.

Section 2. Section 41-5-301, MCA, is amended to read:

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

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

4 (2) The probation officer may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) provide for treatment or adjustment involving probation or other disposition authorized under
27 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents
28 or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if
29 the probation officer proceeds no further unless authorized by the county attorney; ~~or~~

30 (c) recommend that the appropriate court refer the youth to a peer court as provided in [section

1 1]; or

2 ~~(e)~~ (d) refer the matter to the county attorney for filing a petition charging the youth to be a
3 delinquent youth or a youth in need of supervision.

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

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

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

16

17 **Section 3.** Section 41-5-402, MCA, is amended to read:

18 **"41-5-402. Communications privileged.** An incriminating statement relating to any act or omission
19 constituting delinquency or need of supervision made by the ~~participant to the person giving counsel or~~
20 ~~advice~~ youth in a proceeding under 41-5-401 or [section 1] or in the discussions or conferences incident
21 ~~thereto to the proceeding~~ may not be used against the declarant youth in any other proceeding under this
22 chapter, ~~nor may the incriminating statement be admissible or~~ in any criminal proceeding against the
23 ~~declarant youth~~. This section does not apply to the use of voluntary and reliable statements that are offered
24 for impeachment purposes."

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26 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an
27 integral part of Title 41, chapter 5, part 4, and the provisions of Title 41, chapter 5, apply to [section 1].

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