

1 INTRODUCED BY House BILL NO. 477
2 Brad Molnar

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A YOUTH WHO COOPERATES WITH THE
5 AUTHORITIES IN REGARD TO A PERSON WHO PROVIDED THE YOUTH WITH DRUGS MAY NOT BE TRIED
6 AS AN ADULT FOR A CRIME RELATED TO THE YOUTH'S POSSESSION OF THE DRUGS OR RESULTING
7 FROM THE YOUTH'S USE OF THE DRUGS; REQUIRING A YOUTH TO BE CHARGED IN THE YOUTH COURT
8 OR DISTRICT COURT WITH THE MOST SERIOUS PROVABLE OFFENSE; PROVIDING FOR THE
9 DISPOSITION OF MULTIPLE OFFENDERS; PROVIDING FOR DISSEMINATION OF INFORMATION
10 REGARDING CERTAIN YOUTHS; PROVIDING FOR CONFIDENTIALITY OF THE INFORMATION AND
11 INSPECTION OF THE INFORMATION BY THE YOUTH AND THE YOUTH'S PARENTS; AND AMENDING
12 SECTIONS 41-5-206, 41-5-501, 41-5-523, AND 41-5-529, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 41-5-206, MCA, is amended to read:

17 **"41-5-206. Transfer to criminal court prior to prosecution.** (1) ~~After~~ Except as provided in
18 subsection (10), after a petition has been filed alleging delinquency, the court may, upon motion of the
19 county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district
20 court if:

21 (a) (i) the youth charged was 12 years of age or ~~more~~ older at the time of the conduct alleged to
22 be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in
23 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in
24 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if
25 the act had been committed by an adult; or

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

- 28 (A) negligent homicide as defined in 45-5-104;
- 29 (B) arson as defined in 45-6-103;
- 30 (C) aggravated or felony assault as defined in 45-5-202;



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (3) The court shall grant the motion to transfer if the youth was 16 years ~~old~~ of age or older at the
29 time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as
30 defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in

1 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

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

4 (5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the
5 acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense
6 originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in
7 this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or
8 41-5-1105.

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

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

13 (a) tried in youth court;

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

16 (8) If a youth is found guilty in district court of any of the offenses transferred by the youth court
17 and is sentenced to the state prison, the commitment must be to the ~~department of corrections~~. The
18 department shall confine the youth in whatever institution that it considers proper, including a state youth
19 correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not
20 be confined in the state prison.

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

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

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

26 (10) If a youth significantly cooperates in the identification, investigation, and criminal prosecution
27 of a person who furnished drugs to the youth in violation of Title 45, chapter 9, the youth may not be
28 transferred to the district court for prosecution of a criminal offense by the youth relating to the possession
29 or use of the drugs or resulting from the use of the drugs."

30

1 **Section 2.** Section 41-5-501, MCA, is amended to read:

2 **"41-5-501. Petition -- form and content.** A petition initiating proceedings under this chapter ~~shall~~
3 must be signed by the county attorney and ~~shall~~ must be entitled "In the Matter of, a youth" and ~~shall~~
4 must set forth with specificity:

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

7 (2) the charge of an offense, that, if more than one offense may be charged, must be the most
8 serious offense that the county attorney believes can be proven and which shall that must:

9 (a) state the name of the offense;

10 (b) cite in customary form the statute, rule, or other provisions of law ~~which~~ that the youth is
11 alleged to have violated;

12 (c) state the facts constituting the offense in ordinary and concise language and in ~~such a~~ such a manner
13 ~~as to enable~~ that enables a person of common understanding to know what is intended; and

14 (d) state the time and place of the offense as definitely as can be done;

15 (3) the name, birth date, and residence address of the youth;

16 (4) the names and residence addresses of parents, guardian, and spouse of the youth and, if ~~none~~
17 ~~of the parents, guardian, or spouse resides~~ does not reside or ~~can~~ cannot be found within the state or if
18 there is none, the adult relative residing nearest to the court;

19 (5) whether the youth is in detention or shelter care and, if so, the place of detention or shelter
20 care and the time ~~he~~ the youth was detained or sheltered;

21 (6) if any of the matters required to be set forth by this section are not known, a statement of
22 those matters and the fact that they are not known; and

23 (7) a list of witnesses to be used in proving the commission of the offense or offenses charged in
24 the petition, together with their residence addresses. The names and addresses of any witnesses discovered
25 after the filing of the petition ~~shall~~ must be furnished to the youth upon request."

26

27 **Section 3.** Section 41-5-523, MCA, is amended to read:

28 **"41-5-523. Disposition -- sentence to correctional facility -- commitment to department --**
29 **placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth
30 in need of supervision, the youth court may enter its judgment making one or more of the following

1 dispositions:

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

3 (b) place the youth on probation;

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

10 (d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and
11 46-23-506;

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

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

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

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

27 (g) order restitution by the youth or the youth's parents;

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

30 (i) require the performance of community service;

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

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

5 (l) require the parents, guardians, or other persons having legal custody of the youth to furnish
6 services the court may designate;

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

12 (n) commit the youth to a mental health facility if, based upon the testimony of a professional
13 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in
14 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

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

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

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

21 (2) When a youth is committed to the department, the department shall determine the appropriate
22 placement and rehabilitation program for the youth after considering the recommendations made under
23 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

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

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

30 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the

1 execution of sentence of adults convicted of crimes.

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

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

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

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

13 (d) case management of the youth.

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

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

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

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

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

30 (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional

1 judgment copies of medical reports, social history material, education records, and any other clinical,
2 predisposition, or other reports and information pertinent to the care and treatment of the youth.

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

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

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

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

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

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

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

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

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

28 (d) An alternative arrangement must:

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

30 (ii) be in writing and be signed by a representative of the department and the person required to

1 make contributions; and

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

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

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

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

11 (15) (a) A misdemeanor counts as 1 point and a felony counts as 3 points. An offense, except an
12 offense relating to the possession, use, sale, or distribution of tobacco, that can only be committed by a
13 person under a certain age counts as 1 point. Upon accumulating 3 points, a youth must be considered
14 a youth at risk. Upon accumulating 9 points, the youth must be placed in a secure detention facility or a
15 state correctional facility for 45 days of observation and counseling. The staff of the facility must be trained
16 in youth counseling. The youth must be segregated from other youths as much as possible.

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

19 (c) If the court finds that a habitual offender commonly entices or assists other youths to perform
20 illegal acts or has accumulated 13 points, the youth must be designated as a serious habitual offender and
21 must be placed in a state youth correctional facility for no less than 180 days.

22 (d) (i) Law enforcement, educational, and social service agencies; the court; and other agencies
23 and entities involved with a youth who is found by the court or believed by the agency or entity to be a
24 youth at risk, a habitual offender, or a serious habitual offender shall provide the chief youth court probation
25 officer for the county in which the youth resides with any information in the possession of the agency or
26 entity that indicates that the youth is a youth at risk, a habitual offender, or a serious habitual offender.

27 (ii) The chief youth court probation officer shall disseminate the information to agencies and entities
28 that the officer believes should receive it. The information is otherwise confidential and may not be further
29 disseminated.

30 (iii) A person who knowingly further disseminates the information commits a criminal offense and

1 upon conviction shall be fined an amount not to exceed \$5,000. If the person is an employee of the
2 government of the state or of a local government, the employer may discharge the employee because of
3 the conviction.

4 (iv) The youth or a parent or guardian of the youth may inspect and copy the information and may
5 include with the information a response to any piece of information. The response must be disseminated
6 with the information.

7 (v) An agency or entity that no longer needs information disseminated to it shall return the
8 information to the chief youth court probation officer if it is printed information and shall delete the
9 information from its computer files if the information is computerized.

10 (16) If a youth who is serving time in a state youth correctional facility because the youth was
11 found to be a habitual offender or a serious habitual offender needs and is willing to accept treatment for
12 mental, emotional, behavioral, substance abuse, or similar problems, the youth may be transferred to a
13 residential treatment facility and shall remain there until discharged, but not until after the youth has served
14 at least one-half of the imposed detention period. A youth who does not respond to treatment shall finish
15 his period of detention in a correctional facility.

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

19 (18) Before a youth is released from a state youth correctional facility, the department shall adopt
20 and the court shall approve a written supervision plan.

21 (19) (a) If the youth is still subject to the court's jurisdiction and to supervision under the
22 disposition when the youth becomes 21 years of age, this chapter ceases to apply to the person and
23 jurisdiction over the person is transferred to the division of the department that handles adults, which shall
24 then make an appropriate placement. The youth may not be placed and supervised for a period of time in
25 excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense
26 or offenses that brought the youth under the jurisdiction of the youth court.

27 (b) The department shall confine the youth in whatever institution it considers proper, including
28 a youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age
29 may not be confined in the state prison."

30

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0477, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing that a youth who cooperates with the authorities in regard to a person who provided the youth with drugs may not be tried as an adult for a crime related to the youth's possession of the drugs or resulting from the youth's use of the drugs; requiring a youth to be charged in the youth court or district court with the most serious provable offense; providing for the disposition of multiple offenders; providing for dissemination of information regarding certain youths; providing for confidentiality of the information and inspection of the information by the youth and the youth's parents.

ASSUMPTIONS:

1. The provision for 45 day evaluations upon accumulating nine points would impact bed space available at Pine Hills School or other secure correctional facilities. The costs of these evaluations would be significant due to the requirement that these youth be segregated from other youth.
2. HB 477 sets up a point system that requires automatic incarceration which would remove any flexibility from the youth courts and the Department of Corrections (DOC) in handling juveniles. The required incarceration could over-crowd present detention centers and correctional facilities.
3. HB 477 also requires that the court approve all release/parole plans. This provision could significantly restrict the DOC's ability to arrange appropriate acceptable placements upon release from secure facilities.
4. A February 1, 1997, snapshot was taken of 18 year old and younger youth with recorded offenses on the Juvenile Probation Information System. From the information provided it can not be determined if the offenses are misdemeanors or felonies.
5. It is assumed, for the purposes of HB 477, one offense equals one point.
6. Based on assumptions 4 and 5 above, there are the following number of youth in each of the point levels (a youth is counted only once):

<u>Points</u>	<u>Youth</u>
10+	831
9	196
8	276
7	320
6	466
5	590

FISCAL IMPACT:

The fiscal impact of HB 477 is not quantifiable based on the above assumptions; however, it could have a significant impact to the state.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

HB 477 could have significant long-range impacts.

TECHNICAL NOTES:

1. The term "significantly" in regards to cooperating with criminal prosecution is not well defined and could cause increased litigation. Pressure for a youth to cooperate in prosecution could encourage untruthful identification and may endanger youth. Requiring county attorneys to charge the most serious offense takes away prosecutorial discretion.

(Continued)

 2-12-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BRAD MOLNAR, PRIMARY SPONSOR DATE

Fiscal Note for HB0477, as introduced

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TECHNICAL NOTES: (continued)

2. Fiscal impact cannot be determined due to language on page 10, line 16 which says:
“(17) Health, education, welfare, and other agencies involved with the youth shall ensure that funding for the youth follows the youth to the location in which the youth is placed and that the funding is assigned to the appropriate agency or entity.” It may not be possible for agencies to ensure that funding follows a youth due to state or federal law restrictions that prescribe how funds may be spent. Strict compliance with this language could result in funding shortfalls for some programs. For instance, if a child in the custody of the state due to abuse or neglect commits an offense and moves into the juvenile justice system, does the language on page 10 mean that foster care funding should follow the youth into juvenile justice services?