

1 SENATE BILL NO. 46

2 INTRODUCED BY SPRAGUE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING SEIZURE OF THE DRIVER'S LICENSE OF A YOUTH
5 WHO IS DELINQUENT OR IN NEED OF SUPERVISION; AND AMENDING SECTIONS 41-5-301, 41-5-403,
6 AND 41-5-523, MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **Section 1.** Section 41-5-301, MCA, is amended to read:

11 **"41-5-301. Preliminary investigation and disposition.** (1) Whenever the court receives information
12 from any agency or person, including a parent or guardian of a youth, based upon reasonable grounds, that
13 a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court
14 order or consent order, has violated the terms of an order, a probation officer shall make a preliminary
15 inquiry into the matter.

16 (2) The probation officer may:

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

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

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

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

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

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

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

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

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

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

- 1 (ii) terminate the inquiry upon the determination that no further action be taken; and
- 2 (iii) release the youth immediately upon the determination that the filing of a petition is not
- 3 authorized.
- 4 (5) The probation officer upon determining that further action is required may:
- 5 (a) provide counseling, refer the youth and the youth's parents to another agency providing
- 6 appropriate services, or take any other action or make any informal adjustment that does not involve
- 7 probation or detention;
- 8 (b) provide for treatment or adjustment involving probation or other disposition authorized under
- 9 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents
- 10 or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if
- 11 the probation officer proceeds no further unless authorized by the county attorney; or
- 12 (c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent
- 13 youth or a youth in need of supervision.
- 14 (6) The county attorney may apply to the youth court for permission to file a petition charging a
- 15 youth to be a delinquent youth or a youth in need of supervision. The application must be supported by
- 16 evidence that the youth court may require. If it appears that there is probable cause to believe that the
- 17 allegations of the petition are true, the youth court shall grant leave to file the petition.
- 18 (7) A petition charging a youth held in detention must be filed within 7 working days from the date
- 19 that the youth was first taken into custody or the petition must be dismissed and the youth released unless
- 20 good cause is shown to further detain the youth.
- 21 (8) If a petition is not filed under this section, the complainant and victim, if any, must be informed
- 22 by the probation officer of the action and the reasons for not filing and must be advised of the right to
- 23 submit the matter to the county attorney for review. The county attorney, upon receiving a request for
- 24 review, shall consider the facts, consult with the probation officer, and make the final decision as to
- 25 whether a petition is filed."

26

27 **Section 2.** Section 41-5-403, MCA, is amended to read:

28 **"41-5-403. Disposition permitted under informal adjustment -- contributions by parents or**

29 **guardians for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

30 (a) probation;

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

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

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

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

7 (f) seizure of the youth's driver's license, if the youth has one, by the probation officer for a
8 specified period of time. Upon seizure, the probation officer shall notify the department of justice of the
9 reason for and time period of the seizure. The department of justice may not divulge information relating
10 to the seizure to any person or entity outside the law enforcement community and shall expunge the seizure
11 from its records when the seizure period terminates.

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

14 (a) age of the youth;

15 (b) ability of the youth to pay;

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

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

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

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

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

28 (5) If the court determines that the youth's parents or guardians are financially able to pay a
29 contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an
30 amount based on the uniform child support guidelines adopted by the department of public health and

1 human services pursuant to 40-5-209.

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

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

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

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

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

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

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

19 (d) An alternative arrangement must:

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

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

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

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

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

30

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

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

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

7 (b) place the youth on probation;

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

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

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

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

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

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

- 1 (g) order restitution by the youth or the youth's parents;
- 2 (h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense
3 if committed by an adult;
- 4 (i) require the performance of community service;
- 5 (j) require the youth, the youth's parents or guardians, or the persons having legal custody of the
6 youth to receive counseling services;
- 7 (k) require the medical and psychological evaluation of the youth, the youth's parents or guardians,
8 or the persons having legal custody of the youth;
- 9 (l) require the parents, guardians, or other persons having legal custody of the youth to furnish
10 services that the court may designate;
- 11 (m) order further care, treatment, evaluation, or relief that the court considers beneficial to the
12 youth and the community and that does not obligate funding from the department for services outside the
13 state of Montana without the department's approval, except that a youth may not be placed by a youth
14 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to
15 subsection (1)(f), place a youth in a residential treatment facility.
- 16 (n) commit the youth to a mental health facility if, based upon the testimony of a professional
17 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in
18 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.
- 19 (i) A youth adjudicated mentally ill or seriously mentally ill, as defined in 53-21-102, may not be
20 committed or sentenced to a state youth correctional facility.
- 21 (ii) A youth adjudicated 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 (o) place the youth under home arrest as provided in Title 46, chapter 18, part 10;
- 25 (p) order seizure of the youth's driver's license, if the youth has one, by the probation officer for
26 a specified period of time. Upon seizure, the probation officer shall notify the department of justice of the
27 reason for and time period of the seizure. The department of justice may not divulge information relating
28 to the seizure to any person or entity outside the law enforcement community and shall expunge the seizure
29 from its records when the seizure period terminates.
- 30 (2) When a youth is committed to the department, the department shall determine the appropriate

1 placement and rehabilitation program for the youth after considering the recommendations made under
2 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

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

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

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

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

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

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

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

22 (d) case management of the youth.

23 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time
24 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in
25 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of
26 the evaluation, except as provided in subsection (5). A county may contract with the department or other
27 public or private agencies to obtain evaluation services ordered by the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (d) An alternative arrangement must:

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

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

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

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

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

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

20

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0046, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act allowing seizure of the driver's license of a youth who is delinquent or in need of supervision.

ASSUMPTIONS:

1. Youth Court probation officers will be authorized to seize a youth's driver's license.
2. The probation officer will be required to notify the Department of Justice of the reason for and the time of the seizure.
3. Youth Court probation officers are not Department of Corrections employees.
4. The Department of Justice, Motor Vehicle Division would need to make changes in the computer applications to establish new action codes and requirements, establish flagging standards and procedures to individually identify seized licenses, and establish expungement routines. It is estimated that this will require 80 hours of computer programming, analysis and coding to accomplish at a cost to the Department of Justice, Motor Vehicle Division of \$1,600.
5. The Department of Justice, Motor Vehicle Division projects that 12-15 transactions would occur each month. Each transaction would require approximately one-half hour of staff time to complete the record updating, flagging and written notification; or, based upon the projected number of total transaction each month, the equivalent of 20 minutes daily. The additional work will be absorbed.

FISCAL IMPACT:

	<u>FY98</u> <u>Difference</u>	<u>FY99</u> <u>Difference</u>
Department of Justice		
<u>Expenditures:</u>		
Operating Expenses	1,600	0
<u>Funding:</u>		
General Fund	1,600	

TECHNICAL NOTES:

The term "youth in need of supervision" is being changed to "youth in need of intervention" in SB0048.

Dave Lewis 1-9-97
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Mike Sprague 1/10/97
MIKE SPRAGUE, PRIMARY SPONSOR DATE

Fiscal Note for SB0046, as introduced

SB 46

**REREFERRED AND
APPROVED BY COM
ON JUDICIARY**

1 SENATE BILL NO. 46

2 INTRODUCED BY SPRAGUE

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5 OF A YOUTH WHO IS DELINQUENT OR IN NEED OF SUPERVISION; AND AMENDING SECTIONS 41-5-301,
6 41-5-403, AND 41-5-523, MCA."

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13 a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court
14 order or consent order, has violated the terms of an order, a probation officer shall make a preliminary
15 inquiry into the matter.

16 (2) The probation officer may:

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

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

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

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

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

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

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

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

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

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

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 6 appropriate services, or take any other action or make any informal adjustment that does not involve
 7 probation or detention;

8 (b) provide for treatment or adjustment involving probation or other disposition authorized under
 9 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents
 10 or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if
 11 the probation officer proceeds no further unless authorized by the county attorney; or

12 (c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent
 13 youth or a youth in need of supervision.

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

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 19 that the youth was first taken into custody or the petition must be dismissed and the youth released unless
 20 good cause is shown to further detain the youth.

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

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 29 **guardians for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

30 (a) probation;

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

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

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

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

7 (f) ~~seizure~~ CONFISCATION of the youth's driver's license, if the youth has one, by the probation
8 officer for a specified period of time, NOT TO EXCEED 90 DAYS. Upon seizure, the THE probation officer
9 shall notify the department of justice of the reason for and time period of the seizure. The department of
10 justice may not divulge information relating to the seizure to any person or entity outside the law
11 enforcement community and shall expunge the seizure from its records when the seizure period terminates.
12 CONFISCATION AND ITS DURATION. THE DEPARTMENT OF JUSTICE MAY NOT ENTER THE
13 CONFISCATION ON THE YOUTH'S DRIVING RECORD. THE PROBATION OFFICER SHALL NOTIFY THE
14 DEPARTMENT OF JUSTICE WHEN THE CONFISCATED DRIVER'S LICENSE HAS BEEN RETURNED TO THE
15 YOUTH. A YOUTH'S DRIVER'S LICENSE MAY BE CONFISCATED UNDER THIS SUBSECTION MORE THAN
16 ONCE. THE PROBATION OFFICER MAY, IN THE PROBATION OFFICER'S DISCRETION, RETURN A
17 YOUTH'S CONFISCATED DRIVER'S LICENSE BEFORE THE TERMINATION OF THE TIME PERIOD FOR
18 WHICH IT HAD BEEN CONFISCATED.

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

21 (a) age of the youth;

22 (b) ability of the youth to pay;

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

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

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29 returned to the court for further disposition. A youth may not be placed in a state youth correctional facility
30 under informal adjustment.

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2 examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part
3 of the costs for the care, placement, and treatment of the youth, including the costs of necessary medical,
4 dental, and other health care.

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6 contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an
7 amount based on the uniform child support guidelines adopted by the department of public health and
8 human services pursuant to 40-5-209.

9 (6) (a) Except as provided in subsection (6)(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 that there is:

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19 contributions.

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21 based upon:

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14 (b) place the youth on probation;

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

21 (d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and
22 46-23-506;

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

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

29 (i) the court shall determine whether continuation in the youth's own home would be contrary to
30 the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need

- 1 for removal of the youth from the youth's home;
- 2 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile
3 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge
4 finds that the placement is necessary for the protection of the public. The court may order the department
5 to notify the court within 5 working days before the proposed release of a youth from a youth correctional
6 facility. Once a youth is committed to the department for placement in a state youth correctional facility,
7 the department is responsible for determining an appropriate date of release into an appropriate placement.
- 8 (g) order restitution by the youth or the youth's parents;
- 9 (h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense
10 if committed by an adult;
- 11 (i) require the performance of community service;
- 12 (j) require the youth, the youth's parents or guardians, or the persons having legal custody of the
13 youth to receive counseling services;
- 14 (k) require the medical and psychological evaluation of the youth, the youth's parents or guardians,
15 or the persons having legal custody of the youth;
- 16 (l) require the parents, guardians, or other persons having legal custody of the youth to furnish
17 services that the court may designate;
- 18 (m) order further care, treatment, evaluation, or relief that the court considers beneficial to the
19 youth and the community and that does not obligate funding from the department for services outside the
20 state of Montana without the department's approval, except that a youth may not be placed by a youth
21 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to
22 subsection (1)(f), place a youth in a residential treatment facility.
- 23 (n) commit the youth to a mental health facility if, based upon the testimony of a professional
24 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in
25 53-21-102. The youth is entitled to all rights provided by 53-21-114 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 (o) place the youth under home arrest as provided in Title 46, chapter 18, part 10;

2 (p) ~~order seizure~~ CONFISCATION of the youth's driver's license, if the youth has one, by the
 3 probation officer for a specified period of time, NOT TO EXCEED 90 DAYS. Upon seizure, the ~~THE~~
 4 probation officer shall notify the department of justice of the reason for and time period of the seizure. The
 5 department of justice may not divulge information relating to the seizure to any person or entity outside the
 6 law enforcement community and shall expunge the seizure from its records when the seizure period
 7 terminates. CONFISCATION AND ITS DURATION. THE DEPARTMENT OF JUSTICE MAY NOT ENTER THE
 8 CONFISCATION ON THE YOUTH'S DRIVING RECORD. THE PROBATION OFFICER SHALL NOTIFY THE
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 11 ONCE. THE PROBATION OFFICER MAY, IN THE PROBATION OFFICER'S DISCRETION, RETURN A
 12 YOUTH'S CONFISCATED DRIVER'S LICENSE BEFORE THE TERMINATION OF THE TIME PERIOD FOR
 13 WHICH IT HAD BEEN CONFISCATED.

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

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

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

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

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

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

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

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

6 (d) case management of the youth.

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

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

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

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

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

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

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

30 (11) If the court determines that the youth's parents or guardians are financially able to pay a

1 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay
2 an amount based on the uniform child support guidelines adopted by the department of public health and
3 human services pursuant to 40-5-209.

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

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

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

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

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

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

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

21 (d) An alternative arrangement must:

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

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

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

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

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

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

4 -END-

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SENATE BILL NO. 46

INTRODUCED BY SPRAGUE

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING SEIZURE CONFISCATION OF THE DRIVER'S LICENSE OF A YOUTH WHO IS DELINQUENT OR IN NEED OF SUPERVISION; AND AMENDING SECTIONS 41-5-301, 41-5-403, AND 41-5-523, MCA."

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

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2 INTRODUCED BY SPRAGUE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING SEIZURE CONFISCATION OF THE DRIVER'S LICENSE
5 OF A YOUTH WHO IS DELINQUENT OR IN NEED OF SUPERVISION; AND AMENDING SECTIONS 41-5-301,
6 41-5-403, AND 41-5-523, MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **Section 1.** Section 41-5-301, MCA, is amended to read:

11 **"41-5-301. Preliminary investigation and disposition.** (1) Whenever the court receives information
12 from any agency or person, including a parent or guardian of a youth, based upon reasonable grounds, that
13 a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court
14 order or consent order, has violated the terms of an order, a probation officer shall make a preliminary
15 inquiry into the matter.

16 (2) The probation officer may:

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

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

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

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

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

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

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

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

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

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

- 1 (ii) terminate the inquiry upon the determination that no further action be taken; and
- 2 (iii) release the youth immediately upon the determination that the filing of a petition is not
- 3 authorized.
- 4 (5) The probation officer upon determining that further action is required may:
- 5 (a) provide counseling, refer the youth and the youth's parents to another agency providing
- 6 appropriate services, or take any other action or make any informal adjustment that does not involve
- 7 probation or detention;
- 8 (b) provide for treatment or adjustment involving probation or other disposition authorized under
- 9 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents
- 10 or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if
- 11 the probation officer proceeds no further unless authorized by the county attorney; or
- 12 (c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent
- 13 youth or a youth in need of supervision.
- 14 (6) The county attorney may apply to the youth court for permission to file a petition charging a
- 15 youth to be a delinquent youth or a youth in need of supervision. The application must be supported by
- 16 evidence that the youth court may require. If it appears that there is probable cause to believe that the
- 17 allegations of the petition are true, the youth court shall grant leave to file the petition.
- 18 (7) A petition charging a youth held in detention must be filed within 7 working days from the date
- 19 that the youth was first taken into custody or the petition must be dismissed and the youth released unless
- 20 good cause is shown to further detain the youth.
- 21 (8) If a petition is not filed under this section, the complainant and victim, if any, must be informed
- 22 by the probation officer of the action and the reasons for not filing and must be advised of the right to
- 23 submit the matter to the county attorney for review. The county attorney, upon receiving a request for
- 24 review, shall consider the facts, consult with the probation officer, and make the final decision as to
- 25 whether a petition is filed."

26

27 **Section 2.** Section 41-5-403, MCA, is amended to read:

28 **"41-5-403. Disposition permitted under informal adjustment -- contributions by parents or**

29 **guardians for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

30 (a) probation;

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

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

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

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

7 (f) ~~seizure~~ CONFISCATION of the youth's driver's license, if the youth has one, by the probation
8 officer for a specified period of time, NOT TO EXCEED 90 DAYS. ~~Upon seizure, the~~ THE probation officer
9 shall notify the department of justice of the ~~reason for and time period of the seizure.~~ The department of
10 justice may not divulge information relating to the seizure to any person or entity outside the law
11 enforcement community and shall expunge the seizure from its records when the seizure period terminates.
12 CONFISCATION AND ITS DURATION. THE DEPARTMENT OF JUSTICE MAY NOT ENTER THE
13 CONFISCATION ON THE YOUTH'S DRIVING RECORD. THE PROBATION OFFICER SHALL NOTIFY THE
14 DEPARTMENT OF JUSTICE WHEN THE CONFISCATED DRIVER'S LICENSE HAS BEEN RETURNED TO THE
15 YOUTH. A YOUTH'S DRIVER'S LICENSE MAY BE CONFISCATED UNDER THIS SUBSECTION MORE THAN
16 ONCE. THE PROBATION OFFICER MAY, IN THE PROBATION OFFICER'S DISCRETION AND WITH THE
17 CONCURRENCE OF A PARENT OR GUARDIAN, RETURN A YOUTH'S CONFISCATED DRIVER'S LICENSE
18 BEFORE THE TERMINATION OF THE TIME PERIOD FOR WHICH IT HAD BEEN CONFISCATED. THE
19 CONFISCATION MAY NOT BE USED BY AN INSURER AS A FACTOR IN DETERMINING THE PREMIUM OR
20 PART OF A PREMIUM TO BE PAID FOR MOTOR VEHICLE INSURANCE COVERING THE YOUTH OR A
21 VEHICLE OR VEHICLES DRIVEN BY THE YOUTH, NOR MAY IT BE USED AS GROUNDS FOR DENYING
22 COVERAGE FOR AN ACCIDENT OR OTHER OCCURRENCE UNDER AN EXISTING POLICY.

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

25 (a) age of the youth;

26 (b) ability of the youth to pay;

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

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

30 (e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand

1 any loss may not be considered in any case.

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

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

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

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

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

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

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

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

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

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

30 (d) An alternative arrangement must:

- 1 (i) provide sufficient security to ensure compliance with the arrangement;
- 2 (ii) be in writing and be signed by a representative of the department and the person required to
- 3 make contributions; and
- 4 (iii) if approved by the court, be entered into the record of the proceeding.

5 (7) (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

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

13 **"41-5-523. Disposition -- sentence to correctional facility -- commitment to department --**

14 **placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth

15 in need of supervision, the youth court may enter its judgment making one or more of the following

16 dispositions:

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

18 (b) place the youth on probation;

19 (c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state

20 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth

21 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years

22 of age. A youth may not be sentenced to a state youth correctional facility unless the department informs

23 the judge that space is available for the youth at that facility. The sentencing judge may not place

24 limitations on the release unless recommended by the youth placement committee.

25 (d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and

26 46-23-506;

27 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides

28 for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider

29 placement recommendations from the youth placement committee. The judge may not place the youth in

30 an in-state residence unless the department informs the judge that resources are available for placement

1 of the youth at that residence.

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

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

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

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

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

15 (i) require the performance of community service;

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

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

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

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

27 (n) commit the youth to a mental health facility if, based upon the testimony of a professional
28 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in
29 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

30 (i) A youth adjudicated mentally ill or seriously mentally ill, as defined in 53-21-102, may not be

1 committed or sentenced to a state youth correctional facility.

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

5 (o) place the youth under home arrest as provided in Title 46, chapter 18, part 10-;

6 (p) order ~~seizure~~ CONFISCATION of the youth's driver's license, if the youth has one, by the
7 probation officer for a specified period of time, NOT TO EXCEED 90 DAYS. ~~Upon seizure, the~~ THE
8 probation officer shall notify the department of justice of the ~~reason for and time period of the seizure.~~ The
9 department of justice may not divulge information relating to the seizure to any person or entity outside the
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21 COVERAGE FOR AN ACCIDENT OR OTHER OCCURRENCE UNDER AN EXISTING POLICY.

22 (2) When a youth is committed to the department, the department shall determine the appropriate
23 placement and rehabilitation program for the youth after considering the recommendations made under
24 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

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

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

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

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

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

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

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16 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in
17 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of
18 the evaluation, except as provided in subsection (5). A county may contract with the department or other
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24 facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that
25 is transferable to criminal court under 41-5-206.

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27 is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

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29 department, an order pertaining to the youth may be modified only upon notice to the department and
30 subsequent hearing.

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

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

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

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

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

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

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

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

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

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

29 (d) An alternative arrangement must:

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

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

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

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

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

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

12

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0046, second reading-second house

DESCRIPTION OF PROPOSED LEGISLATION:

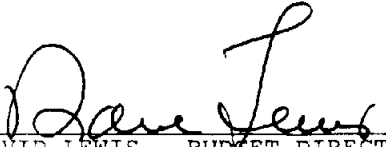
An act allowing confiscation of the driver's license of a youth who is delinquent or in need of supervision.


ASSUMPTIONS:

1. Youth Court probation officers will be authorized to confiscate a youth's driver's license.
2. The probation officer will be required to notify the Department of Justice of the confiscation and its duration.
3. Youth Court probation officers are not Department of Corrections employees.
4. The Department of Justice will flag the driver's license file to alert law enforcement and to eliminate the possibility of the individual obtaining a duplicate driver's license during the confiscation period. This can be accomplished without making changes in the existing driver control computer application.
5. The Department of Justice, Motor Vehicle Division projects that 12-15 transactions would occur each month. Each transaction will require approximately one-half hour of staff time to complete the record updating, flagging, and written notification; or, based upon the projected number of total transaction each month, the equivalent of 20 minutes daily. The additional work will be absorbed.

FISCAL IMPACT:

There is no fiscal impact to the state.


DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning 3-14-97


MIKE SPRAGUE, PRIMARY SPONSOR DATE
3/14/97

Fiscal Note for SB0046, second reading-
second house

SB 46 #2

1 SENATE BILL NO. 46

2 INTRODUCED BY SPRAGUE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING ~~SEIZURE~~ CONFISCATION OF THE DRIVER'S LICENSE
5 OF A YOUTH WHO IS DELINQUENT OR IN NEED OF SUPERVISION; AND AMENDING SECTIONS 41-5-301,
6 41-5-403, AND 41-5-523, MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **Section 1.** Section 41-5-301, MCA, is amended to read:

11 **"41-5-301. Preliminary investigation and disposition.** (1) Whenever the court receives information
12 from any agency or person, including a parent or guardian of a youth, based upon reasonable grounds, that
13 a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court
14 order or consent order, has violated the terms of an order, a probation officer shall make a preliminary
15 inquiry into the matter.

16 (2) The probation officer may:

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

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

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

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

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

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

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

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

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

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

1 (ii) terminate the inquiry upon the determination that no further action be taken; and
2 (iii) release the youth immediately upon the determination that the filing of a petition is not
3 authorized.

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

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

8 (b) provide for treatment or adjustment involving probation or other disposition authorized under
9 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents
10 or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if
11 the probation officer proceeds no further unless authorized by the county attorney; or

12 (c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent
13 youth or a youth in need of supervision.

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

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

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

26

27 **Section 2.** Section 41-5-403, MCA, is amended to read:

28 **"41-5-403. Disposition permitted under informal adjustment -- contributions by parents or**
29 **guardians for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

30 (a) probation;

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

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

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

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

7 ~~(f) seizure~~ CONFISCATION of the youth's driver's license, if the youth has one, by the probation
8 officer for a specified period of time, NOT TO EXCEED 90 DAYS. Upon seizure, the THE probation officer
9 shall notify the department of justice of the reason for and time period of the seizure. The department of
10 justice may not divulge information relating to the seizure to any person or entity outside the law
11 enforcement community and shall expunge the seizure from its records when the seizure period terminates.

12 CONFISCATION AND ITS DURATION. THE DEPARTMENT OF JUSTICE MAY NOT ENTER THE
13 CONFISCATION ON THE YOUTH'S DRIVING RECORD. THE PROBATION OFFICER SHALL NOTIFY THE
14 DEPARTMENT OF JUSTICE WHEN THE CONFISCATED DRIVER'S LICENSE HAS BEEN RETURNED TO THE
15 YOUTH. A YOUTH'S DRIVER'S LICENSE MAY BE CONFISCATED UNDER THIS SUBSECTION MORE THAN
16 ONCE. THE PROBATION OFFICER MAY, IN THE PROBATION OFFICER'S DISCRETION AND WITH THE
17 CONCURRENCE OF A PARENT OR GUARDIAN, RETURN A YOUTH'S CONFISCATED DRIVER'S LICENSE
18 BEFORE THE TERMINATION OF THE TIME PERIOD FOR WHICH IT HAD BEEN CONFISCATED. THE
19 CONFISCATION MAY NOT BE USED BY AN INSURER AS A FACTOR IN DETERMINING THE PREMIUM OR
20 PART OF A PREMIUM TO BE PAID FOR MOTOR VEHICLE INSURANCE COVERING THE YOUTH OR A
21 VEHICLE OR VEHICLES DRIVEN BY THE YOUTH, NOR MAY IT BE USED AS GROUNDS FOR DENYING
22 COVERAGE FOR AN ACCIDENT OR OTHER OCCURRENCE UNDER AN EXISTING POLICY.

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

25 (a) age of the youth;

26 (b) ability of the youth to pay;

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

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

30 (e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand

1 any loss may not be considered in any case.

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

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

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

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

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

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

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

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

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

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

30 (d) An alternative arrangement must:

- 1 (i) provide sufficient security to ensure compliance with the arrangement;
 2 (ii) be in writing and be signed by a representative of the department and the person required to
 3 make contributions; and
 4 (iii) if approved by the court, be entered into the record of the proceeding.

5 (7) (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

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

13 **"41-5-523. Disposition -- sentence to correctional facility -- commitment to department --**
 14 **placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth
 15 in need of supervision, the youth court may enter its judgment making one or more of the following
 16 dispositions:

- 17 (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);
 18 (b) place the youth on probation;
 19 (c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state
 20 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth
 21 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years
 22 of age. A youth may not be sentenced to a state youth correctional facility unless the department informs
 23 the judge that space is available for the youth at that facility. The sentencing judge may not place
 24 limitations on the release unless recommended by the youth placement committee.

25 (d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and
 26 46-23-506;

27 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides
 28 for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider
 29 placement recommendations from the youth placement committee. The judge may not place the youth in
 30 an in-state residence unless the department informs the judge that resources are available for placement

1 of the youth at that residence.

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

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

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

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

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

15 (i) require the performance of community service;

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

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

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

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

27 (n) commit the youth to a mental health facility if, based upon the testimony of a professional
28 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in
29 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

30 (i) A youth adjudicated mentally ill or seriously mentally ill, as defined in 53-21-102, may not be

1 committed or sentenced to a state youth correctional facility.

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

5 (o) place the youth under home arrest as provided in Title 46, chapter 18, part 10-;

6 (p) order seizure CONFISCATION of the youth's driver's license, if the youth has one, by the
7 probation officer for a specified period of time, NOT TO EXCEED 90 DAYS. Upon seizure, the THE
8 probation officer shall notify the department of justice of the reason for and time period of the seizure. The
9 department of justice may not divulge information relating to the seizure to any person or entity outside the
10 law enforcement community and shall expunge the seizure from its records when the seizure period
11 terminates. CONFISCATION AND ITS DURATION. THE DEPARTMENT OF JUSTICE MAY NOT ENTER THE
12 CONFISCATION ON THE YOUTH'S DRIVING RECORD. THE PROBATION OFFICER SHALL NOTIFY THE
13 DEPARTMENT OF JUSTICE WHEN THE CONFISCATED DRIVER'S LICENSE HAS BEEN RETURNED TO THE
14 YOUTH. A YOUTH'S DRIVER'S LICENSE MAY BE CONFISCATED UNDER THIS SUBSECTION MORE THAN
15 ONCE. THE PROBATION OFFICER MAY, IN THE PROBATION OFFICER'S DISCRETION AND WITH THE
16 CONCURRENCE OF A PARENT OR GUARDIAN, RETURN A YOUTH'S CONFISCATED DRIVER'S LICENSE
17 BEFORE THE TERMINATION OF THE TIME PERIOD FOR WHICH IT HAD BEEN CONFISCATED. THE
18 CONFISCATION MAY NOT BE USED BY AN INSURER AS A FACTOR IN DETERMINING THE PREMIUM OR
19 PART OF A PREMIUM TO BE PAID FOR MOTOR VEHICLE INSURANCE COVERING THE YOUTH OR A
20 VEHICLE OR VEHICLES DRIVEN BY THE YOUTH, NOR MAY IT BE USED AS GROUNDS FOR DENYING
21 COVERAGE FOR AN ACCIDENT OR OTHER OCCURRENCE UNDER AN EXISTING POLICY.

22 (2) When a youth is committed to the department, the department shall determine the appropriate
23 placement and rehabilitation program for the youth after considering the recommendations made under
24 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

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

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

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

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

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

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

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

14 (d) case management of the youth.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (d) An alternative arrangement must:

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

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

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

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

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

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

12

-END-