

1 SENATE BILL NO. 99

2 INTRODUCED BY THOMAS

3 BY REQUEST OF THE JUVENILE JUSTICE AND MENTAL HEALTH STUDY COMMISSION
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO JUVENILE
6 JUSTICE; GENERALLY REVISING THE LAWS RELATING TO EXTENDED JURISDICTION PROSECUTION OF
7 JUVENILES; AUTHORIZING THE COURT OR THE COUNTY ATTORNEY TO DESIGNATE A JUVENILE AS
8 AN EXTENDED JURISDICTION JUVENILE; AUTHORIZING ADULT FELONY SENTENCES FOR EXTENDED
9 JURISDICTION JUVENILES; EXTENDING YOUTH COURT JURISDICTION TO AGE 25 FOR EXTENDED
10 JURISDICTION JUVENILES; GENERALLY REVISING THE LAW RELATING TO THE TRANSFER OF JUVENILE
11 CASES TO THE DISTRICT COURT AFTER PROSECUTION IN THE YOUTH COURT WITH RESPECT TO
12 CASES THAT ARE NOT EXTENDED JURISDICTION JUVENILE PROSECUTION CASES OR WERE NOT
13 PREVIOUSLY TRANSFERRED TO ADULT COURT FOR PROSECUTION; PROVIDING FOR TRANSFER, AFTER
14 A HEARING, OF SUPERVISORY RESPONSIBILITY OF CERTAIN JUVENILE CASES FROM THE YOUTH
15 COURT TO THE DISTRICT COURT AFTER PROSECUTION WITH RESPECT TO CASES THAT ARE NOT
16 EXTENDED JURISDICTION JUVENILE PROSECUTION CASES OR WERE NOT PREVIOUSLY TRANSFERRED
17 TO ADULT COURT FOR PROSECUTION; AMENDING SECTIONS 41-5-203, 41-5-205, 41-5-206, 41-5-208,
18 41-5-501, 41-5-1102, 41-5-1103, 41-5-1104, AND 41-5-1105, MCA; AND PROVIDING AN IMMEDIATE
19 EFFECTIVE DATE AND AN APPLICABILITY DATE."

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
22

23 **Section 1.** Section 41-5-203, MCA, is amended to read:

24 **"41-5-203. Jurisdiction of the court.** (1) Except as provided in subsection (2), the court has
25 exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is
26 alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning
27 any person under 21 years of age charged with having violated any law of the state or ordinance of any
28 city or town other than a traffic or fish and game law prior to having become 18 years of age.

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

1 (3) The court has jurisdiction to designate a proceeding an extended jurisdiction juvenile
 2 prosecution, to conduct a hearing, to receive a plea, and to impose upon a youth who is convicted as an
 3 extended jurisdiction juvenile an adult sentence that may extend beyond the youth's age of majority."
 4

5 **Section 2.** Section 41-5-205, MCA, is amended to read:

6 "**41-5-205. Retention of jurisdiction -- termination.** (1) The court may dismiss a petition or
 7 otherwise terminate jurisdiction on its own motion or on the motion or petition of any interested party at
 8 any time. Once a court obtains jurisdiction over a youth, the court retains jurisdiction unless Unless
 9 terminated by the court or by mandatory termination in the following cases; and except as provided in
 10 subsections (2) and (3), the jurisdiction of the court continues until the individual becomes 21 years of age.

11 (2) Court jurisdiction terminates when:

12 ~~(1)(a)~~ at the time the proceedings are transferred to adult criminal district court under 41-5-206
 13 or 41-5-208;

14 ~~(2)(b)~~ at the time the youth is discharged by the department; and or

15 (c) execution of an adult sentence is ordered under 41-5-1105(2)(b)(iii) and the supervisory
 16 responsibilities are transferred to the district court under 41-5-1105.

17 ~~(3) in any event, at the time the youth reaches the age of 21 years.~~

18 (3) The jurisdiction of the court over an extended jurisdiction juvenile, with respect to the offense
 19 for which the youth was convicted as an extended jurisdiction juvenile, extends until the offender becomes
 20 25 years of age unless the court terminates jurisdiction before that date."
 21

22 **Section 3.** Section 41-5-206, MCA, is amended to read:

23 "**41-5-206. Transfer to criminal court prior to prosecution -- optional designation as extended**
 24 **jurisdiction juvenile prosecution.** (1) After Subject to subsection (10), after a petition has been filed alleging
 25 delinquency and before hearing the petition on its merits, the court may, upon motion of the county
 26 attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court
 27 if:

28 (a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be
 29 unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503,
 30 deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the

- 1 attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been
2 committed by an adult; or
- 3 (ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful
4 and the unlawful act is one or more of the following:
- 5 (A) negligent homicide as defined in 45-5-104;
6 (B) arson as defined in 45-6-103;
7 (C) aggravated or felony assault as defined in 45-5-202;
8 (D) robbery as defined in 45-5-401;
9 (E) burglary or aggravated burglary as defined in 45-6-204;
10 (F) aggravated kidnapping as defined in 45-5-303;
11 (G) possession of explosives as defined in 45-8-335;
12 (H) criminal sale of dangerous drugs as defined in 45-9-101;
13 (I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
14 (J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A)
15 through (1)(a)(ii)(I);
- 16 (b) a hearing on whether the transfer should be made is held in conformity with the rules on a
17 hearing on a petition alleging delinquency, except that the hearing must be conducted by the youth court
18 without a jury;
- 19 (c) notice in writing of the time, place, and purpose of the hearing is given to the youth, the
20 youth's counsel, and the youth's parents, guardian, or custodian at least 10 days before the hearing; and
- 21 (d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe
22 that:
- 23 (i) the youth committed the delinquent act alleged;
24 (ii) the seriousness of the offense and the protection of the community require treatment of the
25 youth beyond that afforded by juvenile facilities; and
- 26 (iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.
- 27 (2) In transferring the matter of prosecution to the district court, the court may also consider the
28 following factors:
- 29 (a) the sophistication and maturity of the youth, determined by consideration of the youth's home,
30 environmental situation, and emotional attitude and pattern of living;

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

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

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

11 (5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the
12 acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense
13 originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in
14 this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or
15 41-5-1105.

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

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

20 (a) tried in youth court;

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

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

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

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

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

3 (10) After a hearing on the motion to transfer to district court, the court may designate the case
4 as an extended jurisdiction juvenile prosecution under part 11 of this chapter, rather than transferring the
5 matter to district court."

6
7 **Section 4.** Section 41-5-208, MCA, is amended to read:

8 **"41-5-208. Transfer of supervisory responsibility to district court after prosecution— juvenile**
9 **disposition in district court -- limitation on jurisdiction nonextended jurisdiction and nontransferred cases.**

10 (1) ~~To~~ After adjudication by the court of a case that was not transferred to district court under 41-5-206
11 and that was not prosecuted as an extended jurisdiction juvenile prosecution under part 11 of this chapter,
12 the court may, on its own motion or the motion of the county attorney, transfer jurisdiction to the district
13 court and order the transfer of supervisory responsibility from juvenile probation services to adult probation
14 services. A transfer under this section may be made to ensure continued compliance with the court's
15 disposition under 41-5-523, and may be made at any time after a youth reaches 18 years of age but before
16 the youth reaches 21 years of age, the youth court judge may transfer jurisdiction to district court and order
17 the transfer of supervisory responsibility and the youth's case files to the department.

18 (2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The
19 hearing must be held in conformity with the rules on a hearing on a petition alleging delinquency, except
20 that the hearing must be conducted by the court without a jury. The court shall give the youth, the youth's
21 counsel, and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose
22 of the hearing at least 10 days before the hearing. At the hearing, the youth is entitled to receive:

23 (a) written notice of the motion to transfer;

24 (b) an opportunity to be heard in person and to present witnesses and evidence;

25 (c) a written statement by the court of the evidence relied on and reasons for the transfer;

26 (d) the right to cross-examine witnesses, unless the court finds good cause for not allowing
27 confrontation; and

28 (e) the right to counsel.

29 (3) After the hearing, if the court finds by a preponderance of the evidence that transfer of
30 continuing supervisory responsibility to the district court is appropriate, the court shall order the transfer.

1 ~~(2)~~(4) If a youth whose case has been transferred to district court under this section violates a
2 disposition previously imposed under 41-5-523, the district court may, after hearing, impose conditions as
3 provided under 46-18-201 through 46-18-203.

4 ~~(3)~~(5) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the
5 district court may order that the youth, after reaching 18 years of age:

6 (a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

7 (b) be supervised by the department.

8 ~~(4)~~(6) The district court's jurisdiction over a case transferred under this section terminates when
9 the youth reaches 25 years of age."

10
11 **Section 5.** Section 41-5-501, MCA, is amended to read:

12 "**41-5-501. Petition -- form and content.** (1) A petition initiating proceedings under this chapter
13 ~~shall~~ must be signed by the county attorney and ~~shall~~ must be entitled "In the Matter of, a youth" and
14 ~~shall~~ must set forth with specificity:

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

17 ~~(2)~~(b) the charge of an offense, ~~which that shall~~ must:

18 ~~(a)~~(i) state the name of the offense;

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

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

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

24 ~~(3)~~(c) the name, birth date, and residence address of the youth;

25 ~~(4)~~(d) the names and residence addresses of parents, guardian, and spouse of the youth and, if
26 none of the parents, guardian, or spouse resides or can be found within the state or if there is none, the
27 adult relative residing nearest to the court;

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

30 ~~(6)~~(f) if any of the matters required to be set forth by this section are not known, a statement of

1 those matters and the fact that they are not known; and

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

5 (2) When a county attorney files a delinquency petition alleging that a youth committed an offense
6 that would be a felony if committed by an adult and that is transferable under 41-5-206 or in which a youth
7 12 years of age or older allegedly used a firearm , the county attorney shall indicate in the petition whether
8 the county attorney designates the proceeding an extended jurisdiction juvenile prosecution. When the
9 county attorney files a delinquency petition alleging that a youth committed any other offense that would
10 be a felony if committed by an adult, the county attorney may request that the court designate the
11 proceeding an extended jurisdiction juvenile prosecution."

12

13 **Section 6.** Section 41-5-1102, MCA, is amended to read:

14 **"41-5-1102. Extended jurisdiction juvenile prosecution ~~defined~~ ~~jurisdiction extended~~ --**
15 **designation.** (1) A youth court case involving a youth alleged to have committed an offense that would be
16 a felony if committed by an adult is an extended jurisdiction juvenile prosecution if:

17 (a) the youth was at least 14 years of age at the time of the alleged offense, the ~~prosecutor~~ county
18 attorney requests that the case be designated an extended jurisdiction juvenile prosecution, a hearing is
19 held under 41-5-1103, and the court designates the case as an extended jurisdiction juvenile prosecution;
20 or

21 (b) the county attorney designates in the delinquency petition that the proceeding is an extended
22 jurisdiction juvenile prosecution and the youth is alleged to have committed:

23 (i) ~~the alleged~~ an offense that is transferable under 41-5-206; or

24 (ii) any felony in which the youth allegedly used a firearm, if the youth was at least 12 years of
25 age at the time of the alleged offense and allegedly used a weapon; or

26 (c) after a hearing upon a motion for transfer of the matter of prosecution to the district court under
27 41-5-206, the court designates the case as an extended jurisdiction juvenile prosecution.

28 (2) To enforce the court's disposition in an extended jurisdiction juvenile prosecution, the court
29 shall retain jurisdiction ~~until the case is transferred to district court under this part or jurisdiction is~~
30 ~~terminated under the provisions of~~ as provided in 41-5-205."

1 **Section 7.** Section 41-5-1103, MCA, is amended to read:

2 "**41-5-1103. Hearing — ~~court designation on request.~~** (1) When a ~~prosecutor~~ county attorney
3 requests that a case be designated as an extended jurisdiction juvenile prosecution under 41-5-1102(1)(a),
4 the court shall hold a hearing to consider the request.

5 (2) The hearing must be held within 30 days of the filing of the request unless good cause is
6 shown by the ~~prosecutor~~ county attorney or the youth that the hearing should be held later, in which case
7 the hearing must be held within 90 days of the request.

8 (3) If the ~~prosecutor~~ county attorney shows by clear and convincing evidence that designating the
9 case as an extended jurisdiction juvenile prosecution serves public safety, the court may, within 15 days
10 after the hearing, designate the case as an extended jurisdiction juvenile prosecution. In determining
11 whether public safety is served, the court shall consider the factors enumerated in [section 10].

12 ~~(4) An order designating a case as an extended jurisdiction prosecution is not appealable until after~~
13 ~~disposition under 41-5-1104."~~

14

15 **Section 8.** Section 41-5-1104, MCA, is amended to read:

16 "**41-5-1104. Disposition in extended jurisdiction juvenile prosecutions.** (1) After designation as
17 an extended jurisdiction juvenile prosecution, the case must proceed with an adjudicatory hearing, as
18 provided in 41-5-521. If a youth in an extended jurisdiction juvenile prosecution pleads guilty ~~to~~ or is found
19 guilty of ~~an offense described in 41-5-1102(1)(b)~~ a felony, the court shall:

20 (a) impose one or more juvenile dispositions under 41-5-523; and

21 (b) impose ~~an adult criminal~~ any sentence, the allowed by the statute that establishes the penalty
22 for the offense of which the youth is convicted and that would be permissible if the offender were an adult.

23 The execution of which the sentence imposed under this subsection must be stayed on the condition that
24 the youth not violate the provisions of the disposition order and not commit a new offense. ~~If the youth~~
25 violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed
26 as provided in 41-5-1105.

27 (2) ~~Except as provided in subsection (3), if~~ If a youth is prosecuted as an extended jurisdiction
28 prosecution juvenile after designation by the county attorney in the delinquency petition under
29 41-5-1102(1)(b) is convicted of an offense that is not an offense described in 41-5-1102(1)(b), the court
30 shall adjudicate the youth delinquent and order a disposition under 41-5-523.

1 (3) If a youth in an extended jurisdiction juvenile prosecution pleads guilty to an offense that is not
 2 ~~described in 41-5-1102(1)(b) a felony~~, the court may impose, with the youth's consent, a disposition
 3 provided under subsection (1)(b). If the youth does not consent to disposition under subsection (1)(b), the
 4 court shall impose a disposition as provided under subsection ~~(2)~~ (1)(a)."

5
 6 **Section 9.** Section 41-5-1105, MCA, is amended to read:

7 "**41-5-1105. ~~Execution~~ Revocation of stay -- disposition of adult sentence -- exception -- transfer**
 8 ~~to district court.~~ (1) If a court has imposed on a youth an adult ~~criminal~~ sentence stayed under
 9 41-5-1104(1)(b) and the youth violates the conditions of the stay or is alleged to have committed a new
 10 offense, the court may, without notice, direct that the youth be taken into immediate custody ~~and revoke~~
 11 ~~the stay~~. The court shall notify the youth, the youth's counsel, and the youth's parents, guardian, or
 12 custodian in writing of the reasons alleged to exist for ~~the~~ revocation of the stay of execution of the adult
 13 sentence.

14 (2) (a) If the youth challenges the reasons for the revocation, the court shall hold a ~~summary~~
 15 revocation hearing at which the youth is entitled to receive: be heard and represented by counsel

16 (i) written notice of the alleged violation;

17 (ii) evidence of the alleged violation;

18 (iii) an opportunity to be heard in person and to present witnesses and evidence;

19 (iv) the right to cross-examine witnesses, unless the court finds good cause for not allowing
 20 confrontation; and

21 (v) the right to counsel.

22 (b) After the revocation hearing, if the court finds by a preponderance of the evidence presented
 23 that the conditions of the stay have been violated or that the youth has committed a new offense, the court
 24 shall provide the youth with a written statement of the evidence relied on and reasons for revocation and
 25 shall:

26 (i) continue the stay and place the youth on probation;

27 (ii) impose one or more dispositions under 41-5-523; or

28 ~~+(iii) subject to 41-5-206(8) and (9), order execution of the sentence imposed under~~
 29 41-5-1104(1)(b) or,

30 ~~(iii) continue the stay and make written findings regarding the mitigating factors that justify~~

1 ~~continuing the stay.~~

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

4 (3) Upon revocation and disposition under subsection (2)(b)(iii), the youth court shall transfer the
 5 case to the district court. Upon transfer, the offender's extended jurisdiction juvenile status is terminated
 6 and youth court jurisdiction is terminated. Ongoing supervision of the offender is with the district court's
 7 adult probation services, rather than the youth court's juvenile probation services."

8
 9 **NEW SECTION. Section 10. Public safety.** (1) In determining whether the public safety is served
 10 by designating a case an extended jurisdiction juvenile prosecution, the court shall consider the following
 11 factors:

12 (a) the seriousness of the alleged offense in terms of community protection, including the existence
 13 of any aggravating factors, the use of a firearm, and the impact on the victim;

14 (b) the culpability of the youth in committing the alleged offense, including the level of the youth's
 15 participation in planning and carrying out the offense and the existence of mitigating factors;

16 (c) the youth's prior record of delinquency;

17 (d) the youth's treatment history, including the youth's past willingness to participate meaningfully
 18 in available treatment;

19 (e) the adequacy of the dispositions available in the juvenile justice system; and

20 (f) the dispositional options available for the youth.

21 (2) In considering the factors listed in subsection (1), the court shall give greater weight to the
 22 seriousness of the alleged offense and the youth's prior record of delinquency than to the other listed
 23 factors.

24
 25 **NEW SECTION. Section 11. Proceedings -- rights.** A youth who is the subject of an extended
 26 jurisdiction juvenile prosecution has the right to a trial by jury and to the effective assistance of counsel,
 27 as provided in 41-5-511.

28
 29 **NEW SECTION. Section 12. Enforcement of restitution orders.** If the court orders payment of
 30 restitution and the youth fails to pay the restitution in accordance with the payment schedule or structure

1 established by the court or probation officer, the youth's probation officer may, on the officer's own motion
2 or at the request of the victim, file a petition for violation of probation or ask the court to hold a hearing
3 to determine whether the conditions of probation should be changed. The probation officer shall ask for
4 a hearing if the restitution has not been paid prior to 60 days before the term of probation expires. The
5 court shall schedule and hold the hearing before the youth's term of probation expires.

6
7 **NEW SECTION. Section 13. Codification instruction.** (1) [Sections 10 and 11] are intended to
8 be codified as an integral part of Title 41, chapter 5, part 11, and the provisions of Title 41, chapter 5, part
9 11, apply to [sections 10 and 11].

10 (2) [Section 12] is intended to be codified as an integral part of Title 41, chapter 5, part 5, and the
11 provisions of Title 41, chapter 5, part 5, apply to [section 12].

12
13 **NEW SECTION. Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are
14 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
15 applications, the part remains in effect in all valid applications that are severable from the invalid
16 applications.

17
18 **NEW SECTION. Section 15. Effective date.** [This act] is effective on passage and approval.

19
20 **NEW SECTION. Section 16. Applicability.** [This act] applies to all offenses committed on or after
21 [the effective date of this act].

22 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0099, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill generally revising the laws relating to juvenile justice; generally revising the laws relating to extended jurisdiction prosecution of juveniles; authorizing the court or the county attorney to designate a juvenile as an extended jurisdiction juvenile; authorizing adult felony sentences for extended jurisdiction juveniles; extending youth court jurisdiction to age 25 for extended jurisdiction juveniles; generally revising the law relating to the transfer of juvenile cases to the district court after prosecution in the youth court with respect to cases that are not extended jurisdiction juvenile protection cases or were not previously transferred to adult court for prosecution; providing for transfer, after a hearing, of supervisory responsibility of certain juvenile cases from the youth court to the district court after prosecution with respect to cases that are not extended jurisdiction juvenile prosecution cases or were not previously transferred to adult court for prosecution; amending sections 41-5-203, 41-5-1102, 41-5-1103, 41-5-1104, and 41-5-1105, MCA; and providing an immediate effective date and an applicability date.

ASSUMPTIONS:

1. The Department of Corrections (DOC) assumes that extended jurisdiction implies that affected individuals would be eligible to receive placement services funded by the DOC until they reach the age of 25.
2. There were 90 individuals in the 18 years old category for whom placement funds were paid in fiscal year 1996, totaling approximately \$604,000.
3. Of these individuals, 75% would be on extended supervision in fiscal year 1998 and fiscal year 1999.
4. Of the \$604,000, 75% would be spent on placement funds for this extended supervision in fiscal year 1998; an additional 75% of \$604,000 would be spent in fiscal year 1999 as the 17 year old juveniles in fiscal year 1997 are brought into extended supervision in fiscal year 1999.
5. There is no fiscal impact to the Department of Public Health and Human Services.
6. There is no fiscal impact to the Department of Justice.
7. There is no fiscal impact to the state funded judiciary.

FISCAL IMPACT:

Department of Corrections:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Benefits	453,000	906,000
<u>Funding:</u>		
General Fund (01)	453,000	906,000

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

County probation officer workloads would see an increase as more youth are placed in extended supervision.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Costs in subsequent years would increase as more youth are added to extended supervision until age 25. Some leveling may begin to occur after fiscal year 2002.

Dave Lewis 1-17-97

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

 FRED THOMAS, PRIMARY SPONSOR DATE

Fiscal Note for SB0099, as introduced

SB 99

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25 exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is

26 alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning

27 any person under 21 years of age charged with having violated any law of the state or ordinance of any

28 city or town other than a traffic or fish and game law prior to having become 18 years of age.

29 (2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all

30 alcoholic beverage, tobacco products, and gambling violations alleged to have been committed by a youth.

- 1 (3) The court has jurisdiction to:
- 2 (A) TRANSFER A YOUTH COURT CASE TO THE DISTRICT COURT AFTER NOTICE AND HEARING;
- 3 AND
- 4 (B) WITH RESPECT TO EXTENDED JURISDICTION JUVENILE CASES:
- 5 (I) designate a proceeding AS an extended jurisdiction juvenile prosecution, ~~to~~;
- 6 (II) conduct a hearing, ~~to receive a plea, and to~~ ADMISSIONS, AND impose upon a youth who is
- 7 ~~convicted~~ ADJUDICATED as an extended jurisdiction juvenile ~~an adult~~ A sentence that may extend beyond
- 8 the youth's age of majority;
- 9 (III) STAY THAT PORTION OF AN EXTENDED JURISDICTION SENTENCE THAT IS EXTENDED
- 10 BEYOND A YOUTH'S MAJORITY, SUBJECT TO THE PERFORMANCE OF THE JUVENILE PORTION OF THE
- 11 SENTENCE;
- 12 (IV) CONTINUE, MODIFY, OR REVOKE THE STAY AFTER NOTICE AND HEARING;
- 13 (V) AFTER REVOCATION, TRANSFER EXECUTION OF THE STAYED SENTENCE TO THE
- 14 DEPARTMENT;
- 15 (VI) TRANSFER SUPERVISION OF ANY JUVENILE SENTENCE IF, AFTER NOTICE AND HEARING,
- 16 THE COURT DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT THE JUVENILE HAS
- 17 VIOLATED OR FAILED TO PERFORM THE JUVENILE PORTION OF AN EXTENDED JURISDICTION
- 18 SENTENCE; AND
- 19 (VII) TRANSFER A JUVENILE CASE TO DISTRICT COURT AFTER NOTICE AND HEARING."

20

21 **Section 2.** Section 41-5-205, MCA, is amended to read:

22 "**41-5-205. Retention of jurisdiction -- termination.** (1) The court may dismiss a petition or

23 otherwise terminate jurisdiction on its own motion or on the motion or petition of any interested party at

24 any time. ~~Once a court obtains jurisdiction over a youth, the court retains jurisdiction unless~~ Unless

25 terminated by the court ~~or by mandatory termination in the following cases:~~ and except as provided in

26 subsections (2) and (3), the jurisdiction of the court continues until the individual becomes 21 years of age.

27 (2) Court jurisdiction terminates when:

28 ~~(1)(a)~~ at the time the proceedings are transferred to adult criminal district court under 41-5-206

29 or 41-5-208;

30 ~~(2)(b)~~ at the time the youth is discharged by the department; and or

1 (c) execution of an adult A sentence is ordered under 41-5-1105(2)(b)(iii) and the supervisory
 2 responsibilities are transferred to the district court under 41-5-1105.

3 ~~(3) in any event, at the time the youth reaches the age of 21 years.~~

4 (3) The jurisdiction of the court over an extended jurisdiction juvenile, with respect to the offense
 5 for which the youth was convicted as an extended jurisdiction juvenile, extends until the offender becomes
 6 25 years of age unless the court terminates jurisdiction before that date."

7
 8 **Section 3.** Section 41-5-206, MCA, is amended to read:

9 **"41-5-206. Transfer to criminal court prior to prosecution -- optional designation as extended**
 10 **jurisdiction juvenile prosecution.** (1) ~~After~~ Subject to subsection (10), after a petition has been filed alleging
 11 delinquency and before hearing the petition on its merits, the court may, upon motion of the county
 12 attorney, ~~before hearing the petition on its merits,~~ transfer the matter of prosecution to the district court
 13 if:

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

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

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

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

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

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

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

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

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

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

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

30 (J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A)

1 through (1)(a)(ii)(I);

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

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

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

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

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

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

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

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

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

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

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

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

1 41-5-1105.

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

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

6 (a) tried in youth court;

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

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

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

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

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

19 (10) After a hearing on the motion to transfer to district court, the court may designate the case
20 as an extended jurisdiction juvenile prosecution under part 11 of this chapter, rather than transferring the
21 matter to district court."

22

23 **Section 4.** Section 41-5-208, MCA, is amended to read:

24 **"41-5-208. Transfer of supervisory responsibility to district court after prosecution— juvenile**
25 **disposition in district court -- limitation on jurisdiction nonextended jurisdiction and nontransferred cases.**

26 (1) To After adjudication by the court of a case that was not transferred to district court under 41-5-206
27 and that was not prosecuted as an extended jurisdiction juvenile prosecution under part 11 of this chapter,
28 the court may, on its own THE YOUTH'S motion or the motion of the county attorney, transfer jurisdiction
29 to the district court and order the transfer of supervisory responsibility from juvenile probation services to
30 adult probation services. A transfer under this section may be made to ensure continued compliance with

1 the court's disposition under 41-5-523, and may be made at any time after a youth reaches 18 years of
 2 age but before the youth reaches 21 years of age, ~~the youth court judge may transfer jurisdiction to district~~
 3 ~~court and order the transfer of supervisory responsibility and the youth's case files to the department.~~

4 (2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The
 5 hearing must be held in conformity with the rules on a hearing on a petition alleging delinquency, except
 6 that the hearing must be conducted by the court without a jury. The court shall give the youth, the youth's
 7 counsel, and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose
 8 of the hearing at least 10 days before the hearing. At the hearing, the youth is entitled to receive:

9 (a) written notice of the motion to transfer;

10 (b) an opportunity to be heard in person and to present witnesses and evidence;

11 (c) a written statement by the court of the evidence relied on and reasons for the transfer;

12 (d) the right to cross-examine witnesses, unless the court finds good cause for not allowing
 13 confrontation; and

14 (e) the right to counsel.

15 (3) After the hearing, if the court finds by a preponderance of the evidence that transfer of
 16 continuing supervisory responsibility to the district court is appropriate, the court shall order the transfer.

17 ~~(2)~~(4) If a youth whose case has been transferred to district court under this section violates a
 18 disposition previously imposed under 41-5-523, the district court may, after hearing, impose conditions as
 19 provided under 46-18-201 through 46-18-203.

20 ~~(3)~~(5) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the
 21 district court may order that the youth, after reaching 18 years of age:

22 (a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

23 (b) be supervised by the department.

24 ~~(4)~~(6) The district court's jurisdiction over a case transferred under this section terminates when
 25 the youth reaches 25 years of age."

26
 27 **Section 5.** Section 41-5-501, MCA, is amended to read:

28 **"41-5-501. Petition -- form and content. (1)** A petition initiating proceedings under this chapter
 29 ~~shall~~ must be signed by the county attorney and ~~shall~~ must be entitled "In the Matter of ..., a youth" and
 30 ~~shall~~ must set forth with specificity:

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

3 ~~(2)~~(b) the charge of an offense, ~~which that shall must~~:

4 ~~(a)~~(i) state the name of the offense;

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

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

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

10 ~~(3)~~(c) the name, birth date, and residence address of the youth;

11 ~~(4)~~(d) the names and residence addresses of parents, guardian, and spouse of the youth and, if
12 none of the parents, guardian, or spouse resides or can be found within the state or if there is none, the
13 adult relative residing nearest to the court;

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

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

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

21 (2) When a county attorney files a delinquency petition alleging that a youth committed an offense
22 that would be a felony if committed by an adult and that is transferable under 41-5-206 or in which a youth
23 12 years of age or older allegedly used a firearm , the county attorney shall indicate in the petition whether
24 the county attorney designates the proceeding an extended jurisdiction juvenile prosecution. When the
25 county attorney files a delinquency petition alleging that a youth committed any other offense that would
26 be a felony if committed by an adult, the county attorney may request that the court designate the
27 proceeding an extended jurisdiction juvenile prosecution."

28
29 Section 6. Section 41-5-1102, MCA, is amended to read:

30 "41-5-1102. Extended jurisdiction juvenile prosecution defined ~~— jurisdiction extended —~~

1 designation. (1) A youth court case involving a youth alleged to have committed an offense that would be
2 a felony if committed by an adult is an extended jurisdiction juvenile prosecution if:

3 (a) the youth was at least 14 years of age at the time of the alleged offense, the ~~prosecutor~~ county
4 attorney requests that the case be designated an extended jurisdiction juvenile prosecution, a hearing is
5 held under 41-5-1103, and the court designates the case as an extended jurisdiction juvenile prosecution;
6 ~~or~~

7 (b) the county attorney designates in the delinquency petition that the proceeding is an extended
8 jurisdiction juvenile prosecution and the youth is alleged to have committed:

9 (i) ~~the alleged an~~ offense that is transferable under 41-5-206; or

10 (ii) any felony in which the youth allegedly used a firearm, if the youth was at least 12 years of
11 age at the time of the alleged offense and allegedly used a weapon; or

12 (c) after a hearing upon a motion for transfer of the matter of prosecution to the district court under
13 41-5-206, the court designates the case as an extended jurisdiction juvenile prosecution.

14 (2) To enforce the court's disposition in an extended jurisdiction juvenile prosecution, the court
15 shall retain jurisdiction ~~until the case is transferred to district court under this part or jurisdiction is~~
16 ~~terminated under the provisions of~~ as provided in 41-5-205."

17

18 **Section 7.** Section 41-5-1103, MCA, is amended to read:

19 "**41-5-1103. Hearing —~~court designation on request~~.** (1) When a ~~prosecutor~~ county attorney
20 requests that a case be designated as an extended jurisdiction juvenile prosecution under 41-5-1102(1)(a),
21 the court shall hold a hearing to consider the request.

22 (2) The hearing must be held within 30 days of the filing of the request unless good cause is
23 shown by the ~~prosecutor~~ county attorney or the youth that the hearing should be held later, in which case
24 the hearing must be held within 90 days of the request.

25 (3) If the ~~prosecutor~~ county attorney shows by clear and convincing evidence that designating the
26 case as an extended jurisdiction juvenile prosecution serves public safety, the court may, within 15 days
27 after the hearing, designate the case as an extended jurisdiction juvenile prosecution. In determining
28 whether public safety is served, the court shall consider the factors enumerated in [section 10].

29 (4) ~~An order designating a case as an extended jurisdiction prosecution is not appealable until after~~
30 ~~disposition under 41-5-1104.~~"

1 **Section 8.** Section 41-5-1104, MCA, is amended to read:

2 **"41-5-1104. Disposition in extended jurisdiction juvenile prosecutions.** (1) After designation as
3 an extended jurisdiction juvenile prosecution, the case must proceed with an adjudicatory hearing, as
4 provided in 41-5-521. If a youth in an extended jurisdiction juvenile prosecution pleads guilty ~~to~~ or is found
5 guilty of ~~an offense described in 41-5-1102(1)(b)~~ a felony, the court shall:

6 (a) impose one or more juvenile dispositions under 41-5-523; and

7 (b) impose ~~an adult criminal~~ any sentence, the allowed by the statute that establishes the penalty
8 for the offense of which the youth is convicted and that would be permissible if the offender were an adult.
9 The execution of ~~which~~ the sentence imposed under this subsection must be stayed on the condition that
10 the youth not violate the provisions of the disposition order and not commit a new offense. ~~If the youth~~
11 violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed
12 as provided in 41-5-1105.

13 (2) ~~Except as provided in subsection (3), if~~ If a youth in prosecuted as an extended jurisdiction
14 prosecution juvenile after designation by the county attorney in the delinquency petition under
15 41-5-1102(1)(b) is convicted of an offense that is not an offense described in 41-5-1102(1)(b), the court
16 shall adjudicate the youth delinquent and order a disposition under 41-5-523.

17 (3) If a youth in an extended jurisdiction juvenile prosecution pleads guilty to an offense that is not
18 described in 41-5-1102(1)(b) a felony, the court may impose, with the youth's consent, a disposition
19 provided under subsection (1)(b). If the youth does not consent to disposition under subsection (1)(b), the
20 court shall impose a disposition as provided under subsection ~~(2)~~ (1)(a)."

21

22 **Section 9.** Section 41-5-1105, MCA, is amended to read:

23 **"41-5-1105. ~~Execution~~ Revocation of stay -- disposition of adult sentence -- exception -- transfer**
24 **~~to district court.~~** (1) If a court has imposed on a youth ~~an adult~~ A criminal sentence stayed under
25 41-5-1104(1)(b) and the youth violates the conditions of the stay or is alleged to have committed a new
26 offense, the court may, without notice, direct that the youth be taken into immediate custody ~~and revoke~~
27 ~~the stay.~~ The court shall notify the youth, the youth's counsel, and the youth's parents, guardian, or
28 custodian in writing of the reasons alleged to exist for the revocation of the stay of execution of the adult
29 sentence.

30 (2) (a) If the youth challenges the reasons for the revocation, the court shall hold a ~~summary~~

1 revocation hearing at which the youth is entitled to receive: be heard and represented by counsel

2 (i) written notice of the alleged violation;

3 (ii) evidence of the alleged violation;

4 (iii) an opportunity to be heard in person and to present witnesses and evidence;

5 (iv) the right to cross-examine witnesses, unless the court finds good cause for not allowing
6 confrontation; and

7 (v) the right to counsel.

8 (b) After the revocation hearing, if the court finds by a preponderance of the evidence presented
9 that the conditions of the stay have been violated or that the youth has committed a new offense, the court
10 shall provide the youth with a written statement of the evidence relied on and reasons for revocation and
11 shall:

12 (i) continue the stay and place the youth on probation;

13 (ii) impose one or more dispositions under 41-5-523 IF THE YOUTH IS UNDER 18 YEARS OF AGE;

14 or

15 ~~(iii) subject to 41-5-206(8) and (9), order execution of the sentence imposed under~~
16 ~~41-5-1104(1)(b); or,~~

17 ~~(ii) continue the stay and make written findings regarding the mitigating factors that justify~~
18 ~~continuing the stay.~~

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

21 (3) Upon revocation and disposition under subsection (2)(b)(iii), the youth court shall transfer the
22 case to the district court. Upon transfer, the offender's extended jurisdiction juvenile status is terminated
23 and youth court jurisdiction is terminated. Ongoing supervision of the offender is with the district court's
24 adult probation services DEPARTMENT, rather than the youth court's juvenile probation services."

25
26 **NEW SECTION. Section 10. Public safety.** (1) In determining whether the public safety is served
27 by designating a case an extended jurisdiction juvenile prosecution, the court shall consider the following
28 factors:

29 (a) the seriousness of the alleged offense in terms of community protection, including the existence
30 of any aggravating factors, the use of a firearm, and the impact on the victim;

1 (b) the culpability of the youth in committing the alleged offense, including the level of the youth's
2 participation in planning and carrying out the offense and the existence of mitigating factors;

3 (c) the youth's prior record of delinquency;

4 (d) the youth's treatment history, including the youth's past willingness to participate meaningfully
5 in available treatment;

6 (e) the adequacy of the dispositions available in the juvenile justice system; and

7 (f) the dispositional options available for the youth.

8 (2) In considering the factors listed in subsection (1), the court shall give greater weight to the
9 seriousness of the alleged offense and the youth's prior record of delinquency than to the other listed
10 factors.

11
12 **NEW SECTION. Section 11. Proceedings -- rights.** A youth who is the subject of an extended
13 jurisdiction juvenile prosecution has the right to a trial by jury and to the effective assistance of counsel,
14 as provided in 41-5-511.

15
16 **NEW SECTION. Section 12. Enforcement of restitution orders.** If the court orders payment of
17 restitution and the youth fails to pay the restitution in accordance with the payment schedule or structure
18 established by the court or probation officer, the youth's probation officer may, on the officer's own motion
19 or at the request of the victim, file a petition for violation of probation or ask the court to hold a hearing
20 to determine whether the conditions of probation should be changed. The probation officer shall ask for
21 a hearing if the restitution has not been paid prior to 60 days before the term of probation expires. The
22 court shall schedule and hold the hearing before the youth's term of probation expires.

23
24 **NEW SECTION. Section 13. Codification instruction.** (1) [Sections 10 and 11] are intended to
25 be codified as an integral part of Title 41, chapter 5, part 11, and the provisions of Title 41, chapter 5, part
26 11, apply to [sections 10 and 11].

27 (2) [Section 12] is intended to be codified as an integral part of Title 41, chapter 5, part 5, and the
28 provisions of Title 41, chapter 5, part 5, apply to [section 12].

29
30 **NEW SECTION. Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are

1 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
2 applications, the part remains in effect in all valid applications that are severable from the invalid
3 applications.

4

5 NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.

6

7 NEW SECTION. **Section 16. Applicability.** [This act] applies to all offenses committed on or after
8 [the effective date of this act].

9

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0099, 2nd reading

DESCRIPTION OF PROPOSED LEGISLATION:

A bill generally revising the laws relating to juvenile justice; generally revising the laws relating to extended jurisdiction prosecution of juveniles; authorizing the court or the county attorney to designate a juvenile as an extended jurisdiction juvenile; authorizing felony sentences for extended jurisdiction juveniles; extending youth court jurisdiction to age 25 for extended jurisdiction juveniles; generally revising the law relating to the transfer of juvenile cases to the district court after prosecution in the youth court with respect to cases that are not extended jurisdiction juvenile protection cases or were not previously transferred to adult court for prosecution; providing for transfer, after a hearing, of supervisory responsibility of certain juvenile cases from the youth court to the district court after prosecution with respect to cases that are not extended jurisdiction juvenile prosecution cases or were not previously transferred to adult court for prosecution; and providing an immediate effective date and an applicability date.

ASSUMPTIONS:

1. The Department of Corrections (DOC) assumes that passage of this legislation will result in increased usage of extended jurisdiction by judges.
2. Average yearly new intakes for Pine Hills School (PHS) numbered 132 from 1991 through 1995.
3. A 14% recidivism rate was experienced by these PHS offenders. This equates to 18 offenders being placed on extended supervision with the DOC each year.
4. The DOC would place these 18 offenders on intensive supervision for the first year; the second year they would be placed on normal probation and parole.
5. The cost of intensive supervision is \$17.39 per day; regular probation & parole is \$2.68 per day.
6. Assuming a 10% recidivism rate for probation and parole, 2 of the 18 offenders would fail intensive supervision and would be placed at the boot camp for a 4-month period each year. Costs at the boot camp are \$114.39 per day.
7. There would be 2.00 FTE, intensive supervision officers, who have an average caseload of 12 to 13 each.
8. There is no fiscal impact to the Department of Justice, the Department of Public Health and Human Services, or the state funded Judiciary.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE	2.00	2.00
Personal Services	60,000	60,000
Operating Expenses	<u>81,706</u>	<u>99,314</u>
Total Budget	141,706	159,314
 <u>Funding:</u>		
General Fund (01)	141,706	159,314

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Costs in subsequent years would likely resemble fiscal year 1999 costs as offenders are moved from extended supervision and new offenders are brought under extended supervision.

Dave Lewis 2-7-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 FRED THOMAS, PRIMARY SPONSOR DATE
 Fiscal Note for SB0099, 2nd reading

Am SB 99#2

1 SENATE BILL NO. 99

2 INTRODUCED BY THOMAS

3 BY REQUEST OF THE JUVENILE JUSTICE AND MENTAL HEALTH STUDY COMMISSION
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO JUVENILE
6 JUSTICE; GENERALLY REVISING THE LAWS RELATING TO EXTENDED JURISDICTION PROSECUTION OF
7 JUVENILES; AUTHORIZING THE COURT OR THE COUNTY ATTORNEY TO DESIGNATE A JUVENILE AS
8 AN EXTENDED JURISDICTION JUVENILE; AUTHORIZING ADULT FELONY SENTENCES FOR EXTENDED
9 JURISDICTION JUVENILES; EXTENDING YOUTH COURT JURISDICTION TO AGE 25 FOR EXTENDED
10 JURISDICTION JUVENILES; GENERALLY REVISING THE LAW RELATING TO THE TRANSFER OF JUVENILE
11 CASES TO THE DISTRICT COURT AFTER PROSECUTION IN THE YOUTH COURT WITH RESPECT TO
12 CASES THAT ARE NOT EXTENDED JURISDICTION JUVENILE PROSECUTION CASES OR WERE NOT
13 PREVIOUSLY TRANSFERRED TO ADULT COURT FOR PROSECUTION; PROVIDING FOR TRANSFER, AFTER
14 A HEARING, OF SUPERVISORY RESPONSIBILITY OF CERTAIN JUVENILE CASES FROM THE YOUTH
15 COURT TO THE DISTRICT COURT AFTER PROSECUTION WITH RESPECT TO CASES THAT ARE NOT
16 EXTENDED JURISDICTION JUVENILE PROSECUTION CASES OR WERE NOT PREVIOUSLY TRANSFERRED
17 TO ADULT COURT FOR PROSECUTION; AMENDING SECTIONS 41-5-203, 41-5-205, 41-5-206, 41-5-208,
18 41-5-501, 41-5-1102, 41-5-1103, 41-5-1104, AND 41-5-1105, MCA; AND PROVIDING AN IMMEDIATE
19 EFFECTIVE DATE AND AN APPLICABILITY DATE."
20

21 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.**

1 SENATE BILL NO. 99

2 INTRODUCED BY THOMAS

3 BY REQUEST OF THE JUVENILE JUSTICE AND MENTAL HEALTH STUDY COMMISSION
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO JUVENILE
6 JUSTICE; GENERALLY REVISING THE LAWS RELATING TO EXTENDED JURISDICTION PROSECUTION OF
7 JUVENILES; AUTHORIZING THE COURT OR THE COUNTY ATTORNEY TO DESIGNATE A JUVENILE AS
8 AN EXTENDED JURISDICTION JUVENILE; AUTHORIZING ADULT FELONY SENTENCES FOR EXTENDED
9 JURISDICTION JUVENILES; EXTENDING YOUTH COURT JURISDICTION TO AGE 25 FOR EXTENDED
10 JURISDICTION JUVENILES; GENERALLY REVISING THE LAW RELATING TO THE TRANSFER OF JUVENILE
11 CASES TO THE DISTRICT COURT AFTER PROSECUTION IN THE YOUTH COURT WITH RESPECT TO
12 CASES THAT ARE NOT EXTENDED JURISDICTION JUVENILE PROSECUTION CASES OR WERE NOT
13 PREVIOUSLY TRANSFERRED TO ADULT COURT FOR PROSECUTION; PROVIDING FOR TRANSFER, AFTER
14 A HEARING, OF SUPERVISORY RESPONSIBILITY OF CERTAIN JUVENILE CASES FROM THE YOUTH
15 COURT TO THE DISTRICT COURT AFTER PROSECUTION WITH RESPECT TO CASES THAT ARE NOT
16 EXTENDED JURISDICTION JUVENILE PROSECUTION CASES OR WERE NOT PREVIOUSLY TRANSFERRED
17 TO ADULT COURT FOR PROSECUTION; AMENDING SECTIONS 41-5-203, 41-5-205, 41-5-206, 41-5-208,
18 41-5-501, 41-5-1102, 41-5-1103, 41-5-1104, AND 41-5-1105, MCA; AND PROVIDING AN IMMEDIATE
19 EFFECTIVE DATE AND AN APPLICABILITY DATE."
20

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
2223 **Section 1.** Section 41-5-203, MCA, is amended to read:

24 **"41-5-203. Jurisdiction of the court.** (1) Except as provided in subsection (2), the court has
25 exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is
26 alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning
27 any person under 21 years of age charged with having violated any law of the state or ordinance of any
28 city or town other than a traffic or fish and game law prior to having become 18 years of age.

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

- 1 (3) The court has jurisdiction to:
- 2 (A) TRANSFER A YOUTH COURT CASE TO THE DISTRICT COURT AFTER NOTICE AND HEARING;
- 3 AND
- 4 (B) WITH RESPECT TO EXTENDED JURISDICTION JUVENILE CASES:
- 5 (I) designate a proceeding AS an extended jurisdiction juvenile prosecution, ~~to~~;
- 6 (II) conduct a hearing, ~~to receive a plea, and to~~ ADMISSIONS, AND impose upon a youth who is
- 7 ~~convicted~~ ADJUDICATED as an extended jurisdiction juvenile ~~an adult~~ A sentence that may extend beyond
- 8 the youth's age of majority;
- 9 (III) STAY THAT PORTION OF AN EXTENDED JURISDICTION SENTENCE THAT IS EXTENDED
- 10 BEYOND A YOUTH'S MAJORITY, SUBJECT TO THE PERFORMANCE OF THE JUVENILE PORTION OF THE
- 11 SENTENCE;
- 12 (IV) CONTINUE, MODIFY, OR REVOKE THE STAY AFTER NOTICE AND HEARING;
- 13 (V) AFTER REVOCATION, TRANSFER EXECUTION OF THE STAYED SENTENCE TO THE
- 14 DEPARTMENT;
- 15 (VI) TRANSFER SUPERVISION OF ANY JUVENILE SENTENCE IF, AFTER NOTICE AND HEARING,
- 16 THE COURT DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT THE JUVENILE HAS
- 17 VIOLATED OR FAILED TO PERFORM THE JUVENILE PORTION OF AN EXTENDED JURISDICTION
- 18 SENTENCE; AND
- 19 (VII) TRANSFER A JUVENILE CASE TO DISTRICT COURT AFTER NOTICE AND HEARING."

20

21 Section 2. Section 41-5-205, MCA, is amended to read:

22 "**41-5-205. Retention of jurisdiction -- termination.** (1) The court may dismiss a petition or

23 otherwise terminate jurisdiction on its own motion or on the motion or petition of any interested party at

24 any time. ~~Once a court obtains jurisdiction over a youth, the court retains jurisdiction unless~~ Unless

25 terminated by the court ~~or by mandatory termination in the following cases;~~ and except as provided in

26 subsections (2) and (3), the jurisdiction of the court continues until the individual becomes 21 years of age.

27 (2) Court jurisdiction terminates when:

28 ~~(1)(a)~~ at the time the proceedings are transferred to adult criminal district court under 41-5-206

29 or 41-5-208;

30 ~~(2)(b)~~ at the time the youth is discharged by the department; and or

1 (c) execution of an adult A sentence is ordered under 41-5-1105(2)(b)(iii) and the supervisory
 2 responsibilities are transferred to the district court under 41-5-1105.

3 ~~(3) in any event, at the time the youth reaches the age of 21 years.~~

4 (3) The jurisdiction of the court over an extended jurisdiction juvenile, with respect to the offense
 5 for which the youth was convicted as an extended jurisdiction juvenile, extends until the offender becomes
 6 25 years of age unless the court terminates jurisdiction before that date."

7
 8 **Section 3.** Section 41-5-206, MCA, is amended to read:

9 **"41-5-206. Transfer to criminal court prior to prosecution -- optional designation as extended**
 10 **jurisdiction juvenile prosecution.** (1) ~~After~~ Subject to subsection (10), after a petition has been filed alleging
 11 delinquency and before hearing the petition on its merits, the court may, upon motion of the county
 12 attorney, ~~before hearing the petition on its merits~~, transfer the matter of prosecution to the district court
 13 if:

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

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

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

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

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

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

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

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

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

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

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

30 (J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(iii)(A)

1 through (1)(a)(ii)(I);

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

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

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

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

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

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

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

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

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

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

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

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

1 41-5-1105.

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

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

6 (a) tried in youth court;

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

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

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

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

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

19 (10) After a hearing on the motion to transfer to district court, the court may designate the case
20 as an extended jurisdiction juvenile prosecution under part 11 of this chapter, rather than transferring the
21 matter to district court."

22

23 **Section 4.** Section 41-5-208, MCA, is amended to read:

24 **"41-5-208. Transfer of supervisory responsibility to district court after prosecution— juvenile**
25 **disposition in district court -- limitation on jurisdiction nonextended jurisdiction and nontransferred cases.**

26 (1) ~~To~~ After adjudication by the court of a case that was not transferred to district court under 41-5-206
27 and that was not prosecuted as an extended jurisdiction juvenile prosecution under part 11 of this chapter,
28 the court may, on its own THE YOUTH'S motion or the motion of the county attorney, transfer jurisdiction
29 to the district court and order the transfer of supervisory responsibility from juvenile probation services to
30 adult probation services. A transfer under this section may be made to ensure continued compliance with

1 the court's disposition under 41-5-523, and may be made at any time after a youth reaches 18 years of
2 age but before the youth reaches 21 years of age, ~~the youth court judge may transfer jurisdiction to district~~
3 ~~court and order the transfer of supervisory responsibility and the youth's case files to the department.~~

4 (2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The
5 hearing must be held in conformity with the rules on a hearing on a petition alleging delinquency, except
6 that the hearing must be conducted by the court without a jury. The court shall give the youth, the youth's
7 counsel, and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose
8 of the hearing at least 10 days before the hearing. At the hearing, the youth is entitled to receive:

9 (a) written notice of the motion to transfer;

10 (b) an opportunity to be heard in person and to present witnesses and evidence;

11 (c) a written statement by the court of the evidence relied on and reasons for the transfer;

12 (d) the right to cross-examine witnesses, unless the court finds good cause for not allowing
13 confrontation; and

14 (e) the right to counsel.

15 (3) After the hearing, if the court finds by a preponderance of the evidence that transfer of
16 continuing supervisory responsibility to the district court is appropriate, the court shall order the transfer.

17 ~~(2)~~(4) If a youth whose case has been transferred to district court under this section violates a
18 disposition previously imposed under 41-5-523, the district court may, after hearing, impose conditions as
19 provided under 46-18-201 through 46-18-203.

20 ~~(3)~~(5) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the
21 district court may order that the youth, after reaching 18 years of age:

22 (a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

23 (b) be supervised by the department.

24 ~~(4)~~(6) The district court's jurisdiction over a case transferred under this section terminates when
25 the youth reaches 25 years of age."

26
27 **Section 5.** Section 41-5-501, MCA, is amended to read:

28 **"41-5-501. Petition -- form and content. (1)** A petition initiating proceedings under this chapter
29 shall must be signed by the county attorney and shall must be entitled "In the Matter of, a youth" and
30 shall must set forth with specificity:

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

3 ~~(2)(b)~~ the charge of an offense, ~~which that shall must~~:

4 ~~(a)(i)~~ state the name of the offense;

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

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

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

10 ~~(3)(c)~~ the name, birth date, and residence address of the youth;

11 ~~(4)(d)~~ the names and residence addresses of parents, guardian, and spouse of the youth and, if
12 none of the parents, guardian, or spouse resides or can be found within the state or if there is none, the
13 adult relative residing nearest to the court;

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

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

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

21 (2) When a county attorney files a delinquency petition alleging that a youth committed an offense
22 that would be a felony if committed by an adult and that is transferable under 41-5-206 or in which a youth
23 12 years of age or older allegedly used a firearm, the county attorney shall indicate in the petition whether
24 the county attorney designates the proceeding an extended jurisdiction juvenile prosecution. When the
25 county attorney files a delinquency petition alleging that a youth committed any other offense that would
26 be a felony if committed by an adult, the county attorney may request that the court designate the
27 proceeding an extended jurisdiction juvenile prosecution."

28
29 **Section 6.** Section 41-5-1102, MCA, is amended to read:

30 "**41-5-1102. Extended jurisdiction juvenile prosecution defined** ~~— jurisdiction extended --~~

1 **designation.** (1) A youth court case involving a youth alleged to have committed an offense that would be
2 a felony if committed by an adult is an extended jurisdiction juvenile prosecution if:

3 (a) the youth was at least 14 years of age at the time of the alleged offense, the ~~prosecutor~~ county
4 attorney requests that the case be designated an extended jurisdiction juvenile prosecution, a hearing is
5 held under 41-5-1103, and the court designates the case as an extended jurisdiction juvenile prosecution;
6 ~~or~~

7 (b) the county attorney designates in the delinquency petition that the proceeding is an extended
8 jurisdiction juvenile prosecution and the youth is alleged to have committed:

9 (i) ~~the alleged an offense that~~ is transferable under 41-5-206; or

10 (ii) any felony OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT in which the
11 youth allegedly used a firearm, if the youth was at least 12 years of age at the time of the alleged offense
12 and allegedly used a weapon; or

13 (c) after a hearing upon a motion for transfer of the matter of prosecution to the district court under
14 41-5-206, the court designates the case as an extended jurisdiction juvenile prosecution.

15 (2) To enforce the court's disposition in an extended jurisdiction juvenile prosecution, the court
16 shall retain jurisdiction ~~until the case is transferred to district court under this part or jurisdiction is~~
17 ~~terminated under the provisions of~~ as provided in 41-5-205."

18
19 **Section 7.** Section 41-5-1103, MCA, is amended to read:

20 "**41-5-1103. Hearing ~~—court designation on request.~~** (1) When a ~~prosecutor~~ county attorney
21 requests that a case be designated as an extended jurisdiction juvenile prosecution under 41-5-1102(1)(a),
22 the court shall hold a hearing to consider the request.

23 (2) The hearing must be held within 30 days of the filing of the request unless good cause is
24 shown by the ~~prosecutor~~ county attorney or the youth that the hearing should be held later, in which case
25 the hearing must be held within 90 days of the request.

26 (3) If the ~~prosecutor~~ county attorney shows by clear and convincing evidence that designating the
27 case as an extended jurisdiction juvenile prosecution serves public safety, the court may, within 15 days
28 after the hearing, designate the case as an extended jurisdiction juvenile prosecution. In determining
29 whether public safety is served, the court shall consider the factors enumerated in [section 10].

30 (4) ~~An order designating a case as an extended jurisdiction prosecution is not appealable until after~~

1 ~~disposition under 41-5-1104."~~

2

3 **Section 8.** Section 41-5-1104, MCA, is amended to read:

4 **"41-5-1104. Disposition in extended jurisdiction juvenile prosecutions.** (1) After designation as
 5 an extended jurisdiction juvenile prosecution, the case must proceed with an adjudicatory hearing, as
 6 provided in 41-5-521. If a youth in an extended jurisdiction juvenile prosecution ~~pleads guilty to~~ ADMITS
 7 TO or is found guilty of an offense described in 41-5-1102(1)(b) a felony ADJUDICATED TO HAVE
 8 COMMITTED AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT, the court shall:

9 (a) impose one or more juvenile dispositions under 41-5-523; and

10 (b) impose ~~an adult criminal~~ any sentence, ~~the~~ allowed by the statute that establishes the penalty
 11 for the offense of which the youth is convicted and that would be permissible if the offender were an adult.
 12 The execution of ~~which~~ the sentence imposed under this subsection must be stayed on the condition that
 13 the youth not violate the provisions of the disposition order and not commit a new offense. ~~If the youth~~
 14 ~~violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed~~
 15 ~~as provided in 41-5-1105.~~

16 (2) ~~Except as provided in subsection (3), if~~ If a youth in prosecuted as an extended jurisdiction
 17 prosecution juvenile after designation by the county attorney in the delinquency petition under
 18 41-5-1102(1)(b) is convicted of an offense ADMITS TO OR IS ADJUDICATED TO HAVE COMMITTED AN
 19 OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT that is not an offense described in
 20 41-5-1102(1)(b), the court shall adjudicate the youth delinquent and order a disposition under 41-5-523.

21 (3) If a youth in an extended jurisdiction juvenile prosecution ~~pleads guilty to~~ ADMITS TO OR IS
 22 ADJUDICATED TO HAVE COMMITTED an offense that is WOULD not BE ~~described in 41-5-1102(1)(b)~~
 23 a felony IF COMMITTED BY AN ADULT, the court may impose, with the youth's consent, a disposition
 24 provided under subsection (1)(b). If the youth does not consent to disposition under subsection (1)(b), the
 25 court shall impose a disposition as provided under subsection ~~{2}~~ (1)(a)."

26

27 **Section 9.** Section 41-5-1105, MCA, is amended to read:

28 **"41-5-1105. ~~Execution~~ Revocation of stay -- disposition of adult sentence -- exception -- transfer**
 29 **~~to district court.~~** (1) If a court has imposed on a youth ~~an adult~~ A criminal sentence stayed under
 30 41-5-1104(1)(b) and the youth violates the conditions of the stay or is alleged to have committed a new

1 offense, the court may, without notice, direct that the youth be taken into immediate custody ~~and revoke~~
 2 ~~the stay~~. The court shall notify the youth, the youth's counsel, and the youth's parents, guardian, or
 3 custodian in writing of the reasons alleged to exist for ~~the~~ revocation of the stay of execution of the adult
 4 sentence.

5 (2) (a) If the youth challenges the reasons for the revocation, the court shall hold a ~~summary~~
 6 revocation hearing at which the youth is entitled to receive: be heard and represented by counsel

7 (i) written notice of the alleged violation;

8 (ii) evidence of the alleged violation;

9 (iii) an opportunity to be heard in person and to present witnesses and evidence;

10 (iv) the right to cross-examine witnesses, unless the court finds good cause for not allowing
 11 confrontation; and

12 (v) the right to counsel.

13 (b) After the revocation hearing, if the court finds by a preponderance of the evidence presented
 14 that the conditions of the stay have been violated or that the youth has committed a new offense, the court
 15 shall provide the youth with a written statement of the evidence relied on and reasons for revocation and
 16 shall:

17 (i) continue the stay and place the youth on probation;

18 (ii) impose one or more dispositions under 41-5-523 IF THE YOUTH IS UNDER 18 YEARS OF AGE;

19 or

20 ~~(iii) subject to 41-5-206(8) and (9), order execution of the sentence imposed under~~
 21 ~~41-5-1104(1)(b); or,~~

22 ~~(ii) continue the stay and make written findings regarding the mitigating factors that justify~~
 23 ~~continuing the stay.~~

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

26 (3) Upon revocation and disposition under subsection (2)(b)(iii), the youth court shall transfer the
 27 case to the district court. Upon transfer, the offender's extended jurisdiction juvenile status is terminated
 28 and youth court jurisdiction is terminated. Ongoing supervision of the offender is with the district court's
 29 adult probation services DEPARTMENT, rather than the youth court's juvenile probation services."

30

1 **NEW SECTION. Section 10. Public safety.** (1) In determining whether the public safety is served
2 by designating a case an extended jurisdiction juvenile prosecution, the court shall consider the following
3 factors:

4 (a) the seriousness of the alleged offense in terms of community protection, including the existence
5 of any aggravating factors, the use of a firearm, and the impact on the victim;

6 (b) the culpability of the youth in committing the alleged offense, including the level of the youth's
7 participation in planning and carrying out the offense and the existence of mitigating factors;

8 (c) the youth's prior record of delinquency;

9 (d) the youth's treatment history, including the youth's past willingness to participate meaningfully
10 in available treatment;

11 (e) the adequacy of the dispositions available in the juvenile justice system; and

12 (f) the dispositional options available for the youth.

13 (2) In considering the factors listed in subsection (1), the court shall give greater weight to the
14 seriousness of the alleged offense and the youth's prior record of delinquency than to the other listed
15 factors.

16
17 **NEW SECTION. Section 11. Proceedings -- rights.** A youth who is the subject of an extended
18 jurisdiction juvenile prosecution has the right to a trial by jury and to the effective assistance of counsel,
19 as provided in 41-5-511.

20
21 **NEW SECTION. Section 12. Enforcement of restitution orders.** If the court orders payment of
22 restitution and the youth fails to pay the restitution in accordance with the payment schedule or structure
23 established by the court or probation officer, the youth's probation officer may, on the officer's own motion
24 or at the request of the victim, file a petition for violation of probation or ask the court to hold a hearing
25 to determine whether the conditions of probation should be changed. The probation officer shall ask for
26 a hearing if the restitution has not been paid prior to 60 days before the term of probation expires. The
27 court shall schedule and hold the hearing before the youth's term of probation expires.

28
29 **NEW SECTION. Section 13. Codification instruction.** (1) [Sections 10 and 11] are intended to
30 be codified as an integral part of Title 41, chapter 5, part 11, and the provisions of Title 41, chapter 5, part

1 11, apply to [sections 10 and 11].

2 (2) [Section 12] is intended to be codified as an integral part of Title 41, chapter 5, part 5, and the
3 provisions of Title 41, chapter 5, part 5, apply to [section 12].

4

5 **NEW SECTION. Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are
6 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
7 applications, the part remains in effect in all valid applications that are severable from the invalid
8 applications.

9

10 **NEW SECTION. Section 15. Effective date.** [This act] is effective on passage and approval.

11

12 **NEW SECTION. Section 16. Applicability.** [This act] applies to all offenses committed on or after
13 [the effective date of this act].

14

-END-

1 SENATE BILL NO. 99

2 INTRODUCED BY THOMAS

3 BY REQUEST OF THE JUVENILE JUSTICE AND MENTAL HEALTH STUDY COMMISSION
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO JUVENILE
6 JUSTICE; GENERALLY REVISING THE LAWS RELATING TO EXTENDED JURISDICTION PROSECUTION OF
7 JUVENILES; AUTHORIZING THE COURT OR THE COUNTY ATTORNEY TO DESIGNATE A JUVENILE AS
8 AN EXTENDED JURISDICTION JUVENILE; AUTHORIZING ADULT FELONY SENTENCES FOR EXTENDED
9 JURISDICTION JUVENILES; EXTENDING YOUTH COURT JURISDICTION TO AGE 25 FOR EXTENDED
10 JURISDICTION JUVENILES; GENERALLY REVISING THE LAW RELATING TO THE TRANSFER OF JUVENILE
11 CASES TO THE DISTRICT COURT AFTER PROSECUTION IN THE YOUTH COURT WITH RESPECT TO
12 CASES THAT ARE NOT EXTENDED JURISDICTION JUVENILE PROSECUTION CASES OR WERE NOT
13 PREVIOUSLY TRANSFERRED TO ADULT COURT FOR PROSECUTION; PROVIDING FOR TRANSFER, AFTER
14 A HEARING, OF SUPERVISORY RESPONSIBILITY OF CERTAIN JUVENILE CASES FROM THE YOUTH
15 COURT TO THE DISTRICT COURT AFTER PROSECUTION WITH RESPECT TO CASES THAT ARE NOT
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2 (A) TRANSFER A YOUTH COURT CASE TO THE DISTRICT COURT AFTER NOTICE AND HEARING;

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6 (II) conduct a hearing, to receive a plea, and to ADMISSIONS, AND impose upon a youth who is
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 8 the youth's age of majority;

9 (III) STAY THAT PORTION OF AN EXTENDED JURISDICTION SENTENCE THAT IS EXTENDED
 10 BEYOND A YOUTH'S MAJORITY, SUBJECT TO THE PERFORMANCE OF THE JUVENILE PORTION OF THE
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12 (IV) CONTINUE, MODIFY, OR REVOKE THE STAY AFTER NOTICE AND HEARING;

13 (V) AFTER REVOCATION, TRANSFER EXECUTION OF THE STAYED SENTENCE TO THE
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15 (VI) TRANSFER SUPERVISION OF ANY JUVENILE SENTENCE IF, AFTER NOTICE AND HEARING,
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27 (2) Court jurisdiction terminates when:

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 29 or 41-5-208;

30 (2)(b) at the time the youth is discharged by the department; and or

1 (c) execution of an adult A sentence is ordered under 41-5-1105(2)(b)(iii) and the supervisory
 2 responsibilities are transferred to the district court under 41-5-1105.

3 ~~(3) in any event, at the time the youth reaches the age of 21 years.~~

4 (3) The jurisdiction of the court over an extended jurisdiction juvenile, with respect to the offense
 5 for which the youth was convicted as an extended jurisdiction juvenile, extends until the offender becomes
 6 25 years of age FOR THE TIME PERIOD OF ANY INCARCERATION INCLUDED IN THE ADULT CRIMINAL
 7 SENTENCE IMPOSED unless the court terminates jurisdiction before that date."

8
 9 **Section 3.** Section 41-5-206, MCA, is amended to read:

10 **"41-5-206. Transfer to criminal court prior to prosecution -- optional designation as extended**
 11 **jurisdiction juvenile prosecution.** (1) ~~After~~ Subject to subsection (10), after a petition has been filed alleging
 12 delinquency and before hearing the petition on its merits, the court may, upon motion of the county
 13 attorney, ~~before hearing the petition on its merits~~, transfer the matter of prosecution to the district court
 14 if:

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

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

22 (A) negligent homicide as defined in 45-5-104;

23 (B) arson as defined in 45-6-103;

24 (C) aggravated or felony assault as defined in 45-5-202;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the
29 acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense
30 originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in

1 this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or
2 41-5-1105.

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

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

7 (a) tried in youth court;

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

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

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

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

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

20 (10) After a hearing on the motion to transfer to district court, the court may designate the case
21 as an extended jurisdiction juvenile prosecution under part 11 of this chapter, rather than transferring the
22 matter to district court."

23

24 **Section 4.** Section 41-5-208, MCA, is amended to read:

25 **"41-5-208. Transfer of supervisory responsibility to district court after prosecution -- juvenile**
26 **disposition in district court -- limitation on jurisdiction nonextended jurisdiction and nontransferred cases.**

27 **(1) To After adjudication by the court of a case that was not transferred to district court under 41-5-206**
28 **and that was not prosecuted as an extended jurisdiction juvenile prosecution under part 11 of this chapter,**
29 **the court may, on its own THE YOUTH'S motion or the motion of the county attorney, transfer jurisdiction**
30 **to the district court and order the transfer of supervisory responsibility from juvenile probation services to**

1 adult probation services. A transfer under this section may be made to ensure continued compliance with
 2 the court's disposition under 41-5-523, and may be made at any time after a youth reaches 18 years of
 3 age but before the youth reaches 21 years of age, the youth court judge may transfer jurisdiction to district
 4 court and order the transfer of supervisory responsibility and the youth's case files to the department.

5 (2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The
 6 hearing must be held in conformity with the rules on a hearing on a petition alleging delinquency, except
 7 that the hearing must be conducted by the court without a jury. The court shall give the youth, the youth's
 8 counsel, and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose
 9 of the hearing at least 10 days before the hearing. At the hearing, the youth is entitled to receive:

10 (a) written notice of the motion to transfer;

11 (b) an opportunity to be heard in person and to present witnesses and evidence;

12 (c) a written statement by the court of the evidence relied on and reasons for the transfer;

13 (d) the right to cross-examine witnesses, unless the court finds good cause for not allowing
 14 confrontation; and

15 (e) the right to counsel.

16 (3) After the hearing, if the court finds by a preponderance of the evidence that transfer of
 17 continuing supervisory responsibility to the district court is appropriate, the court shall order the transfer.

18 ~~(2)~~(4) If a youth whose case has been transferred to district court under this section violates a
 19 disposition previously imposed under 41-5-523, the district court may, after hearing, impose conditions as
 20 provided under 46-18-201 through 46-18-203.

21 ~~(3)~~(5) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the
 22 district court may order that the youth, after reaching 18 years of age:

23 (a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

24 (b) be supervised by the department.

25 ~~(4)~~(6) The district court's jurisdiction over a case transferred under this section terminates when
 26 the youth reaches 25 years of age."

27
 28 **Section 5.** Section 41-5-501, MCA, is amended to read:

29 **"41-5-501. Petition -- form and content. (1)** A petition initiating proceedings under this chapter
 30 ~~shall~~ must be signed by the county attorney and ~~shall~~ must be entitled "In the Matter of, a youth" and

1 ~~shall~~ must set forth with specificity:

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

4 ~~(2)(b)~~ the charge of an offense, ~~which that shall~~ must:

5 ~~(a)(i)~~ state the name of the offense;

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

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

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

11 ~~(3)(c)~~ the name, birth date, and residence address of the youth;

12 ~~(4)(d)~~ the names and residence addresses of parents, guardian, and spouse of the youth and, if
13 none of the parents, guardian, or spouse resides or can be found within the state or if there is none, the
14 adult relative residing nearest to the court;

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

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

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

22 (2) When a county attorney files a delinquency petition alleging that a youth committed an offense
23 that would be a felony if committed by an adult and that is transferable under 41-5-206 or in which a youth
24 12 years of age or older allegedly used a firearm , the county attorney shall indicate in the petition whether
25 the county attorney designates the proceeding an extended jurisdiction juvenile prosecution. When the
26 county attorney files a delinquency petition alleging that a youth committed any other offense that would
27 be a felony if committed by an adult, the county attorney may request that the court designate the
28 proceeding an extended jurisdiction juvenile prosecution."

29

30 **Section 6.** Section 41-5-1102, MCA, is amended to read:

1 "**41-5-1102. Extended jurisdiction juvenile prosecution ~~defined~~ ~~jurisdiction extended~~ --**
 2 **designation.** (1) A youth court case involving a youth alleged to have committed an offense that would be
 3 a felony if committed by an adult is an extended jurisdiction juvenile prosecution if:

4 (a) the youth was at least 14 years of age at the time of the alleged offense, the ~~prosecutor~~ county
 5 attorney requests that the case be designated an extended jurisdiction juvenile prosecution, a hearing is
 6 held under 41-5-1103, and the court designates the case as an extended jurisdiction juvenile prosecution;
 7 ~~or~~

8 (b) the county attorney designates in the delinquency petition that the proceeding is an extended
 9 jurisdiction juvenile prosecution and the youth is alleged to have committed:

10 (i) ~~the alleged~~ an offense that is transferable under 41-5-206; or

11 (ii) any felony OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT in which the
 12 youth allegedly used a firearm, if the youth was at least 12 years of age at the time of the alleged offense
 13 and allegedly used a weapon; or

14 (c) after a hearing upon a motion for transfer of the matter of prosecution to the district court under
 15 41-5-206, the court designates the case as an extended jurisdiction juvenile prosecution.

16 (2) To enforce the court's disposition in an extended jurisdiction juvenile prosecution, the court
 17 shall retain jurisdiction ~~until the case is transferred to district court under this part or jurisdiction is~~
 18 ~~terminated under the provisions of~~ as provided in 41-5-205."

19
 20 **Section 7.** Section 41-5-1103, MCA, is amended to read:

21 "**41-5-1103. Hearing ~~--- court designation on request.~~** (1) When a ~~prosecutor~~ county attorney
 22 requests that a case be designated as an extended jurisdiction juvenile prosecution under 41-5-1102(1)(a),
 23 the court shall hold a hearing to consider the request.

24 (2) The hearing must be held within 30 days of the filing of the request unless good cause is
 25 shown by the ~~prosecutor~~ county attorney or the youth that the hearing should be held later, in which case
 26 the hearing must be held within 90 days of the request.

27 (3) If the ~~prosecutor~~ county attorney shows by clear and convincing evidence that designating the
 28 case as an extended jurisdiction juvenile prosecution serves public safety, the court may, within 15 days
 29 after the hearing, designate the case as an extended jurisdiction juvenile prosecution. In determining
 30 whether public safety is served, the court shall consider the factors enumerated in [section 10].

1 ~~(4) An order designating a case as an extended jurisdiction prosecution is not appealable until after~~
2 ~~disposition under 41-5-1104."~~

3
4 **Section 8.** Section 41-5-1104, MCA, is amended to read:

5 "**41-5-1104. Disposition in extended jurisdiction juvenile prosecutions.** (1) After designation as
6 an extended jurisdiction juvenile prosecution, the case must proceed with an adjudicatory hearing, as
7 provided in 41-5-521. If a youth in an extended jurisdiction juvenile prosecution ~~pleads guilty to~~ ADMITS
8 TO or is found guilty of an offense described in ~~41-5-1102(1)(b) a felony~~ ADJUDICATED TO HAVE
9 COMMITTED AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT, the court shall:

10 (a) impose one or more juvenile dispositions under 41-5-523; and

11 (b) impose ~~an adult criminal~~ any sentence, the allowed by the statute that establishes the penalty
12 for the offense of which the youth is convicted and that would be permissible if the offender were an adult.
13 The execution of which the sentence imposed under this subsection must be stayed on the condition that
14 the youth not violate the provisions of the disposition order and not commit a new offense. If the youth
15 violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed
16 as provided in 41-5-1105.

17 (2) ~~Except as provided in subsection (3), if~~ If a youth in prosecuted as an extended jurisdiction
18 prosecution juvenile after designation by the county attorney in the delinquency petition under
19 41-5-1102(1)(b) is convicted of an offense ADMITS TO OR IS ADJUDICATED TO HAVE COMMITTED AN
20 OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT that is not an offense described in
21 41-5-1102(1)(b), the court shall adjudicate the youth delinquent and order a disposition under 41-5-523.

22 (3) If a youth in an extended jurisdiction juvenile prosecution ~~pleads guilty to~~ ADMITS TO OR IS
23 ADJUDICATED TO HAVE COMMITTED an offense that is WOULD not BE described in 41-5-1102(1)(b)
24 a felony IF COMMITTED BY AN ADULT, the court may impose, with the youth's consent, a disposition
25 provided under subsection (1)(b). If the youth does not consent to disposition under subsection (1)(b), the
26 court shall impose a disposition as provided under subsection ~~(2)~~ (1)(a)."

27
28 **Section 9.** Section 41-5-1105, MCA, is amended to read:

29 "**41-5-1105. Execution Revocation of stay -- disposition of adult sentence -- exception -- transfer**
30 ~~to district court.~~ (1) If a court has imposed on a youth ~~an adult~~ A ~~criminal~~ sentence stayed under

1 41-5-1104(1)(b) and the youth violates the conditions of the stay or is alleged to have committed a new
 2 offense, the court may, without notice, direct that the youth be taken into immediate custody ~~and revoke~~
 3 ~~the stay~~. The court shall notify the youth, the youth's counsel, and the youth's parents, guardian, or
 4 custodian in writing of the reasons alleged to exist for the revocation of the stay of execution of the adult
 5 sentence.

6 (2) (a) If the youth challenges the reasons for the revocation, the court shall hold a ~~summary~~
 7 revocation hearing at which the youth is entitled to receive: be heard and represented by counsel

8 (i) written notice of the alleged violation;

9 (ii) evidence of the alleged violation;

10 (iii) an opportunity to be heard in person and to present witnesses and evidence;

11 (iv) the right to cross-examine witnesses, unless the court finds good cause for not allowing
 12 confrontation; and

13 (v) the right to counsel.

14 (b) After the revocation hearing, if the court finds by a preponderance of the evidence presented
 15 that the conditions of the stay have been violated or that the youth has committed a new offense, the court
 16 shall provide the youth with a written statement of the evidence relied on and reasons for revocation and
 17 shall:

18 (i) continue the stay and place the youth on probation;

19 (ii) impose one or more dispositions under 41-5-523 IF THE YOUTH IS UNDER 18 YEARS OF AGE;

20 or

21 ~~+(iii) subject to 41-5-206(8) and (9), order execution of the sentence imposed under~~
 22 ~~41-5-1104(1)(b); or,~~

23 ~~(iii) continue the stay and make written findings regarding the mitigating factors that justify~~
 24 ~~continuing the stay.~~

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

27 (3) Upon revocation and disposition under subsection (2)(b)(iii), the youth court shall transfer the
 28 case to the district court. Upon transfer, the offender's extended jurisdiction juvenile status is terminated
 29 and youth court jurisdiction is terminated. Ongoing supervision of the offender is with the district court's
 30 adult probation services DEPARTMENT, rather than the youth court's juvenile probation services."

1 **NEW SECTION. Section 10. Public safety.** (1) In determining whether the public safety is served
2 by designating a case an extended jurisdiction juvenile prosecution, the court shall consider the following
3 factors:

4 (a) the seriousness of the alleged offense in terms of community protection, including the existence
5 of any aggravating factors, the use of a firearm, and the impact on the victim;

6 (b) the culpability of the youth in committing the alleged offense, including the level of the youth's
7 participation in planning and carrying out the offense and the existence of mitigating factors;

8 (c) the youth's prior record of delinquency;

9 (d) the youth's treatment history, including the youth's past willingness to participate meaningfully
10 in available treatment;

11 (e) the adequacy of the dispositions available in the juvenile justice system; and

12 (f) the dispositional options available for the youth.

13 (2) In considering the factors listed in subsection (1), the court shall give greater weight to the
14 seriousness of the alleged offense and the youth's prior record of delinquency than to the other listed
15 factors.

16

17 **NEW SECTION. Section 11. Proceedings -- rights.** A youth who is the subject of an extended
18 jurisdiction juvenile prosecution has the right to a trial by jury and to the effective assistance of counsel,
19 as provided in 41-5-511.

20

21 **NEW SECTION. Section 12. Enforcement of restitution orders.** If the court orders payment of
22 restitution and the youth fails to pay the restitution in accordance with the payment schedule or structure
23 established by the court or probation officer, the youth's probation officer may, on the officer's own motion
24 or at the request of the victim, file a petition for violation of probation or ask the court to hold a hearing
25 to determine whether the conditions of probation should be changed. The probation officer shall ask for
26 a hearing if the restitution has not been paid prior to 60 days before the term of probation expires. The
27 court shall schedule and hold the hearing before the youth's term of probation expires.

28

29 **NEW SECTION. Section 13. Codification instruction.** (1) [Sections 10 and 11] are intended to
30 be codified as an integral part of Title 41, chapter 5, part 11, and the provisions of Title 41, chapter 5, part

1 11, apply to [sections 10 and 11].

2 (2) [Section 12] is intended to be codified as an integral part of Title 41, chapter 5, part 5, and the
3 provisions of Title 41, chapter 5, part 5, apply to [section 12].

4

5 NEW SECTION. **Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are
6 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
7 applications, the part remains in effect in all valid applications that are severable from the invalid
8 applications.

9

10 NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.

11

12 NEW SECTION. **Section 16. Applicability.** [This act] applies to all offenses committed on or after
13 [the effective date of this act].

14

-END-



FREE CONFERENCE COMMITTEE

on Senate Bill 99
Report No. 1, April 11, 1997

Page 1 of 2

Mr. President and Mr. Speaker:

We, your FREE Conference Committee on Senate Bill 99, met and considered the amendments on the Select Committee on Corrections report dated March 11, 1997.

We recommend that Senate Bill 99 (reference copy - salmon) be amended as follows:

1. Page 2, line 28.

Strike: "41-5-206"

2. Page 2, line 29.

Strike: "or"

Following: "41-5-208"

Insert: "or an information is filed concerning the offense in district court pursuant to 41-5-206"

3. Page 3, lines 6 and 7.

Strike: "FOR" on line 6 through "IMPOSED" on line 7

Insert: "until the offender becomes 25 years of age"

4. Page 8, line 10.

Strike: "transferable"

Insert: "listed"

5. Page 11.

Following: line 27

Insert: "

NEW SECTION. Section 13. Coordination instruction. If Senate Bill No. 48 and this bill are both passed and approved, then the reference to "41-5-206(8) and (9)" in 41-5-1105 in this bill must read "41-5-206(6) and (7)".

Renumber: subsequent sections

ADOPT

REJECT

770919CC.STS

SB 99

And that this FREE Conference Committee report be adopted.

For the Senate:

Fred Thomas
Senator Fred Thomas, Chair

Mike Halligan
Senator Mike Halligan

Walter McNutt
Senator Walter McNutt

TS
Amd. Coord.

RWS
Sec. of Senate

For the House:

Loren Soft
Rep. Loren Soft, Chair

Daniel McGee
Rep. Daniel McGee

Diana Wyatt
Rep. Diana Wyatt

1 SENATE BILL NO. 99

2 INTRODUCED BY THOMAS

3 BY REQUEST OF THE JUVENILE JUSTICE AND MENTAL HEALTH STUDY COMMISSION
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO JUVENILE
6 JUSTICE; GENERALLY REVISING THE LAWS RELATING TO EXTENDED JURISDICTION PROSECUTION OF
7 JUVENILES; AUTHORIZING THE COURT OR THE COUNTY ATTORNEY TO DESIGNATE A JUVENILE AS
8 AN EXTENDED JURISDICTION JUVENILE; AUTHORIZING ADULT FELONY SENTENCES FOR EXTENDED
9 JURISDICTION JUVENILES; EXTENDING YOUTH COURT JURISDICTION TO AGE 25 FOR EXTENDED
10 JURISDICTION JUVENILES; GENERALLY REVISING THE LAW RELATING TO THE TRANSFER OF JUVENILE
11 CASES TO THE DISTRICT COURT AFTER PROSECUTION IN THE YOUTH COURT WITH RESPECT TO
12 CASES THAT ARE NOT EXTENDED JURISDICTION JUVENILE PROSECUTION CASES OR WERE NOT
13 PREVIOUSLY TRANSFERRED TO ADULT COURT FOR PROSECUTION; PROVIDING FOR TRANSFER, AFTER
14 A HEARING, OF SUPERVISORY RESPONSIBILITY OF CERTAIN JUVENILE CASES FROM THE YOUTH
15 COURT TO THE DISTRICT COURT AFTER PROSECUTION WITH RESPECT TO CASES THAT ARE NOT
16 EXTENDED JURISDICTION JUVENILE PROSECUTION CASES OR WERE NOT PREVIOUSLY TRANSFERRED
17 TO ADULT COURT FOR PROSECUTION; AMENDING SECTIONS 41-5-203, 41-5-205, 41-5-206, 41-5-208,
18 41-5-501, 41-5-1102, 41-5-1103, 41-5-1104, AND 41-5-1105, MCA; AND PROVIDING AN IMMEDIATE
19 EFFECTIVE DATE AND AN APPLICABILITY DATE."
20

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
2223 **Section 1.** Section 41-5-203, MCA, is amended to read:

24 **"41-5-203. Jurisdiction of the court.** (1) Except as provided in subsection (2), the court has
25 exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is
26 alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning
27 any person under 21 years of age charged with having violated any law of the state or ordinance of any
28 city or town other than a traffic or fish and game law prior to having become 18 years of age.

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

- 1 (3) The court has jurisdiction to:
- 2 (A) TRANSFER A YOUTH COURT CASE TO THE DISTRICT COURT AFTER NOTICE AND HEARING;
- 3 AND
- 4 (B) WITH RESPECT TO EXTENDED JURISDICTION JUVENILE CASES:
- 5 (I) designate a proceeding AS an extended jurisdiction juvenile prosecution, ~~to~~;
- 6 (II) conduct a hearing, ~~to receive a plea, and to~~ ADMISSIONS, AND impose upon a youth who is
- 7 ~~convicted~~ ADJUDICATED as an extended jurisdiction juvenile ~~an adult~~ A sentence that may extend beyond
- 8 the youth's age of majority;
- 9 (III) STAY THAT PORTION OF AN EXTENDED JURISDICTION SENTENCE THAT IS EXTENDED
- 10 BEYOND A YOUTH'S MAJORITY, SUBJECT TO THE PERFORMANCE OF THE JUVENILE PORTION OF THE
- 11 SENTENCE;
- 12 (IV) CONTINUE, MODIFY, OR REVOKE THE STAY AFTER NOTICE AND HEARING;
- 13 (V) AFTER REVOCATION, TRANSFER EXECUTION OF THE STAYED SENTENCE TO THE
- 14 DEPARTMENT;
- 15 (VI) TRANSFER SUPERVISION OF ANY JUVENILE SENTENCE IF, AFTER NOTICE AND HEARING,
- 16 THE COURT DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT THE JUVENILE HAS
- 17 VIOLATED OR FAILED TO PERFORM THE JUVENILE PORTION OF AN EXTENDED JURISDICTION
- 18 SENTENCE; AND
- 19 (VII) TRANSFER A JUVENILE CASE TO DISTRICT COURT AFTER NOTICE AND HEARING."

21 **Section 2.** Section 41-5-205, MCA, is amended to read:

22 "**41-5-205. Retention of jurisdiction -- termination.** (1) The court may dismiss a petition or

23 otherwise terminate jurisdiction on its own motion or on the motion or petition of any interested party at

24 any time. ~~Once a court obtains jurisdiction over a youth, the court retains jurisdiction unless~~ Unless

25 terminated by the court ~~or by mandatory termination in the following cases;~~ and except as provided in

26 subsections (2) and (3), the jurisdiction of the court continues until the individual becomes 21 years of age.

27 (2) Court jurisdiction terminates when:

28 (1)(a) ~~at the time~~ the proceedings are transferred to ~~adult criminal~~ district court under ~~41-5-206~~

29 ~~or~~ 41-5-208 OR AN INFORMATION IS FILED CONCERNING THE OFFENSE IN DISTRICT COURT PURSUANT

30 TO 41-5-206;

1 ~~(2)(b) at the time the youth is discharged by the department; and or~~
 2 ~~(c) execution of an adult. A sentence is ordered under 41-5-1105(2)(b)(iii) and the supervisory~~
 3 ~~responsibilities are transferred to the district court under 41-5-1105.~~
 4 ~~(3) in any event, at the time the youth reaches the age of 21 years.~~
 5 (3) The jurisdiction of the court over an extended jurisdiction juvenile, with respect to the offense
 6 for which the youth was convicted as an extended jurisdiction juvenile, extends until the offender becomes
 7 25 years of age. FOR THE TIME PERIOD OF ANY INCARCERATION INCLUDED IN THE ADULT CRIMINAL
 8 SENTENCE IMPOSED UNTIL THE OFFENDER BECOMES 25 YEARS OF AGE unless the court terminates
 9 jurisdiction before that date."

10

11 **Section 3.** Section 41-5-206, MCA, is amended to read:

12 **"41-5-206. Transfer to criminal court prior to prosecution -- optional designation as extended**
 13 **jurisdiction juvenile prosecution.** (1) ~~After~~ Subject to subsection (10), after a petition has been filed alleging
 14 delinquency and before hearing the petition on its merits, the court may, upon motion of the county
 15 attorney, ~~before hearing the petition on its merits~~, transfer the matter of prosecution to the district court
 16 if:

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

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

- 24 (A) negligent homicide as defined in 45-5-104;
- 25 (B) arson as defined in 45-6-103;
- 26 (C) aggravated or felony assault as defined in 45-5-202;
- 27 (D) robbery as defined in 45-5-401;
- 28 (E) burglary or aggravated burglary as defined in 45-6-204;
- 29 (F) aggravated kidnapping as defined in 45-5-303;
- 30 (G) possession of explosives as defined in 45-8-335;

- 1 (H) criminal sale of dangerous drugs as defined in 45-9-101;
- 2 (I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
- 3 (J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A)
- 4 through (1)(a)(iii)(I);
- 5 (b) a hearing on whether the transfer should be made is held in conformity with the rules on a
- 6 hearing on a petition alleging delinquency, except that the hearing must be conducted by the youth court
- 7 without a jury;
- 8 (c) notice in writing of the time, place, and purpose of the hearing is given to the youth, the
- 9 youth's counsel, and the youth's parents, guardian, or custodian at least 10 days before the hearing; and
- 10 (d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe
- 11 that:
- 12 (i) the youth committed the delinquent act alleged;
- 13 (ii) the seriousness of the offense and the protection of the community require treatment of the
- 14 youth beyond that afforded by juvenile facilities; and
- 15 (iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.
- 16 (2) In transferring the matter of prosecution to the district court, the court may also consider the
- 17 following factors:
- 18 (a) the sophistication and maturity of the youth, determined by consideration of the youth's home,
- 19 environmental situation, and emotional attitude and pattern of living;
- 20 (b) the record and previous history of the youth, including previous contacts with the youth court,
- 21 law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior
- 22 commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts is not of
- 23 itself grounds for denying the transfer.
- 24 (3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time
- 25 of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined
- 26 in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103,
- 27 of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.
- 28 (4) Upon transfer to district court, the judge shall make written findings of the reasons why the
- 29 jurisdiction of the youth court was waived and the case transferred to district court.
- 30 (5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the

1 acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense
2 originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in
3 this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or
4 41-5-1105.

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

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

9 (a) tried in youth court;

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

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

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

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

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

22 (10) After a hearing on the motion to transfer to district court, the court may designate the case
23 as an extended jurisdiction juvenile prosecution under part 11 of this chapter, rather than transferring the
24 matter to district court."

25

26 **Section 4.** Section 41-5-208, MCA, is amended to read:

27 **"41-5-208. Transfer of supervisory responsibility to district court after prosecution— juvenile**
28 **disposition in district court -- limitation on jurisdiction nonextended jurisdiction and nontransferred cases.**

29 (1) ~~To~~ After adjudication by the court of a case that was not transferred to district court under 41-5-206
30 and that was not prosecuted as an extended jurisdiction juvenile prosecution under part 11 of this chapter,

1 the court may, on its own THE YOUTH'S motion or the motion of the county attorney, transfer jurisdiction
 2 to the district court and order the transfer of supervisory responsibility from juvenile probation services to
 3 adult probation services. A transfer under this section may be made to ensure continued compliance with
 4 the court's disposition under 41-5-523, and may be made at any time after a youth reaches 18 years of
 5 age but before the youth reaches 21 years of age, the youth court judge may transfer jurisdiction to district
 6 court and order the transfer of supervisory responsibility and the youth's case files to the department.

7 (2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The
 8 hearing must be held in conformity with the rules on a hearing on a petition alleging delinquency, except
 9 that the hearing must be conducted by the court without a jury. The court shall give the youth, the youth's
 10 counsel, and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose
 11 of the hearing at least 10 days before the hearing. At the hearing, the youth is entitled to receive:

12 (a) written notice of the motion to transfer;

13 (b) an opportunity to be heard in person and to present witnesses and evidence;

14 (c) a written statement by the court of the evidence relied on and reasons for the transfer;

15 (d) the right to cross-examine witnesses, unless the court finds good cause for not allowing
 16 confrontation; and

17 (e) the right to counsel.

18 (3) After the hearing, if the court finds by a preponderance of the evidence that transfer of
 19 continuing supervisory responsibility to the district court is appropriate, the court shall order the transfer.

20 ~~(2)~~(4) If a youth whose case has been transferred to district court under this section violates a
 21 disposition previously imposed under 41-5-523, the district court may, after hearing, impose conditions as
 22 provided under 46-18-201 through 46-18-203.

23 ~~(3)~~(5) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the
 24 district court may order that the youth, after reaching 18 years of age:

25 (a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

26 (b) be supervised by the department.

27 ~~(4)~~(6) The district court's jurisdiction over a case transferred under this section terminates when
 28 the youth reaches 25 years of age."

29
 30 **Section 5.** Section 41-5-501, MCA, is amended to read:

1 **"41-5-501. Petition -- form and content. (1)** A petition initiating proceedings under this chapter
 2 ~~shall~~ must be signed by the county attorney and ~~shall~~ must be entitled "In the Matter of, a youth" and
 3 ~~shall~~ must set forth with specificity:

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

6 ~~(2)~~(b) the charge of an offense, ~~which that shall~~ must:

7 ~~(a)~~(i) state the name of the offense;

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

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

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

13 ~~(3)~~(c) the name, birth date, and residence address of the youth;

14 ~~(4)~~(d) the names and residence addresses of parents, guardian, and spouse of the youth and, if
 15 none of the parents, guardian, or spouse resides or can be found within the state or if there is none, the
 16 adult relative residing nearest to the court;

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

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

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

24 (2) When a county attorney files a delinquency petition alleging that a youth committed an offense
 25 that would be a felony if committed by an adult and that is transferable under 41-5-206 or in which a youth
 26 12 years of age or older allegedly used a firearm , the county attorney shall indicate in the petition whether
 27 the county attorney designates the proceeding an extended jurisdiction juvenile prosecution. When the
 28 county attorney files a delinquency petition alleging that a youth committed any other offense that would
 29 be a felony if committed by an adult, the county attorney may request that the court designate the
 30 proceeding an extended jurisdiction juvenile prosecution."

1 **Section 6.** Section 41-5-1102, MCA, is amended to read:

2 "**41-5-1102. Extended jurisdiction juvenile prosecution defined**—~~jurisdiction extended --~~
3 **designation.** (1) A youth court case involving a youth alleged to have committed an offense that would be
4 a felony if committed by an adult is an extended jurisdiction juvenile prosecution if:

5 (a) the youth was at least 14 years of age at the time of the alleged offense, the ~~prosecutor~~ county
6 attorney requests that the case be designated an extended jurisdiction juvenile prosecution, a hearing is
7 held under 41-5-1103, and the court designates the case as an extended jurisdiction juvenile prosecution;

8 or

9 (b) the county attorney designates in the delinquency petition that the proceeding is an extended
10 jurisdiction juvenile prosecution and the youth is alleged to have committed:

11 (i) ~~the alleged an offense that is transferable~~ LISTED under 41-5-206; or

12 (ii) any felony OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT in which the
13 youth allegedly used a firearm, if the youth was at least 12 years of age at the time of the alleged offense
14 and allegedly used a weapon; or

15 (c) after a hearing upon a motion for transfer of the matter of prosecution to the district court under
16 41-5-206, the court designates the case as an extended jurisdiction juvenile prosecution.

17 (2) To enforce the court's disposition in an extended jurisdiction juvenile prosecution, the court
18 shall retain jurisdiction until ~~the case is transferred to district court under this part or jurisdiction is~~
19 ~~terminated under the provisions of~~ as provided in 41-5-205."

20

21 **Section 7.** Section 41-5-1103, MCA, is amended to read:

22 "**41-5-1103. Hearing**—~~court designation on request.~~ (1) When a ~~prosecutor~~ county attorney
23 requests that a case be designated as an extended jurisdiction juvenile prosecution under 41-5-1102(1)(a),
24 the court shall hold a hearing to consider the request.

25 (2) The hearing must be held within 30 days of the filing of the request unless good cause is
26 shown by the ~~prosecutor~~ county attorney or the youth that the hearing should be held later, in which case
27 the hearing must be held within 90 days of the request.

28 (3) If the ~~prosecutor~~ county attorney shows by clear and convincing evidence that designating the
29 case as an extended jurisdiction juvenile prosecution serves public safety, the court may, within 15 days
30 after the hearing, designate the case as an extended jurisdiction juvenile prosecution. In determining

1 whether public safety is served, the court shall consider the factors enumerated in [section 10].

2 ~~(4) An order designating a case as an extended jurisdiction prosecution is not appealable until after~~
3 ~~disposition under 41-5-1104."~~

4
5 **Section 8.** Section 41-5-1104, MCA, is amended to read:

6 **"41-5-1104. Disposition in extended jurisdiction juvenile prosecutions.** (1) After designation as
7 an extended jurisdiction juvenile prosecution, the case must proceed with an adjudicatory hearing, as
8 provided in 41-5-521. If a youth in an extended jurisdiction juvenile prosecution ~~pleads guilty to~~ ADMITS
9 TO or is found guilty of an offense described in 41-5-1102(1)(b) a felony ADJUDICATED TO HAVE
10 COMMITTED AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT, the court shall:

11 (a) impose one or more juvenile dispositions under 41-5-523; and

12 (b) impose ~~an adult criminal~~ any sentence, the allowed by the statute that establishes the penalty
13 for the offense of which the youth is convicted and that would be permissible if the offender were an adult.
14 The execution of ~~which~~ the sentence imposed under this subsection must be stayed on the condition that
15 the youth not violate the provisions of the disposition order and not commit a new offense. ~~If the youth~~
16 ~~violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed~~
17 ~~as provided in 41-5-1105.~~

18 (2) ~~Except as provided in subsection (3), if~~ If a youth in prosecuted as an extended jurisdiction
19 prosecution juvenile after designation by the county attorney in the delinquency petition under
20 41-5-1102(1)(b) is convicted of an offense ADMITS TO OR IS ADJUDICATED TO HAVE COMMITTED AN
21 OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT that is not an offense described in
22 41-5-1102(1)(b), the court shall adjudicate the youth delinquent and order a disposition under 41-5-523.

23 (3) If a youth in an extended jurisdiction juvenile prosecution ~~pleads guilty to~~ ADMITS TO OR IS
24 ADJUDICATED TO HAVE COMMITTED an offense that is WOULD not BE described in 41-5-1102(1)(b)
25 a felony IF COMMITTED BY AN ADULT, the court may impose, with the youth's consent, a disposition
26 provided under subsection (1)(b). If the youth does not consent to disposition under subsection (1)(b), the
27 court shall impose a disposition as provided under subsection ~~(2)~~ (1)(a)."

28
29 **Section 9.** Section 41-5-1105, MCA, is amended to read:

30 **"41-5-1105. Execution Revocation of stay -- disposition of adult sentence -- exception -- transfer**

1 ~~to district court.~~ (1) If a court has imposed on a youth ~~an adult~~ A criminal sentence stayed under
 2 41-5-1104(1)(b) and the youth violates the conditions of the stay or is alleged to have committed a new
 3 offense, the court may, without notice, direct that the youth be taken into immediate custody ~~and revoke~~
 4 ~~the stay.~~ The court shall notify the youth, the youth's counsel, and the youth's parents, guardian, or
 5 custodian in writing of the reasons alleged to exist for ~~the~~ revocation of the stay of execution of the adult
 6 sentence.

7 (2) (a) If the youth challenges the reasons for the revocation, the court shall hold a ~~summary~~
 8 revocation hearing at which the youth is entitled to receive: ~~be heard and represented by counsel~~

9 (i) written notice of the alleged violation;

10 (ii) evidence of the alleged violation;

11 (iii) an opportunity to be heard in person and to present witnesses and evidence;

12 (iv) the right to cross-examine witnesses, unless the court finds good cause for not allowing
 13 confrontation; and

14 (v) the right to counsel.

15 (b) After the revocation hearing, if the court finds by a preponderance of the evidence presented
 16 that the conditions of the stay have been violated or that the youth has committed a new offense, the court
 17 shall provide the youth with a written statement of the evidence relied on and reasons for revocation and
 18 shall:

19 (i) continue the stay and place the youth on probation;

20 (ii) impose one or more dispositions under 41-5-523 IF THE YOUTH IS UNDER 18 YEARS OF AGE;

21 or

22 ~~(i)(iii)~~ subject to 41-5-206(8) and (9), order execution of the sentence imposed under
 23 41-5-1104(1)(b); ~~or,~~

24 ~~(ii) continue the stay and make written findings regarding the mitigating factors that justify~~
 25 ~~continuing the stay.~~

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

28 (3) Upon revocation and disposition under subsection (2)(b)(iii), the youth court shall transfer the
 29 case to the district court. Upon transfer, the offender's extended jurisdiction juvenile status is terminated
 30 and youth court jurisdiction is terminated. Ongoing supervision of the offender is with the district court's

1 ~~adult probation services~~ DEPARTMENT, rather than the youth court's juvenile probation services."

2

3 NEW SECTION. Section 10. Public safety. (1) In determining whether the public safety is served
4 by designating a case an extended jurisdiction juvenile prosecution, the court shall consider the following
5 factors:

6 (a) the seriousness of the alleged offense in terms of community protection, including the existence
7 of any aggravating factors, the use of a firearm, and the impact on the victim;

8 (b) the culpability of the youth in committing the alleged offense, including the level of the youth's
9 participation in planning and carrying out the offense and the existence of mitigating factors;

10 (c) the youth's prior record of delinquency;

11 (d) the youth's treatment history, including the youth's past willingness to participate meaningfully
12 in available treatment;

13 (e) the adequacy of the dispositions available in the juvenile justice system; and

14 (f) the dispositional options available for the youth.

15 (2) In considering the factors listed in subsection (1), the court shall give greater weight to the
16 seriousness of the alleged offense and the youth's prior record of delinquency than to the other listed
17 factors.

18

19 NEW SECTION. Section 11. Proceedings -- rights. A youth who is the subject of an extended
20 jurisdiction juvenile prosecution has the right to a trial by jury and to the effective assistance of counsel,
21 as provided in 41-5-511.

22

23 NEW SECTION. Section 12. Enforcement of restitution orders. If the court orders payment of
24 restitution and the youth fails to pay the restitution in accordance with the payment schedule or structure
25 established by the court or probation officer, the youth's probation officer may, on the officer's own motion
26 or at the request of the victim, file a petition for violation of probation or ask the court to hold a hearing
27 to determine whether the conditions of probation should be changed. The probation officer shall ask for
28 a hearing if the restitution has not been paid prior to 60 days before the term of probation expires. The
29 court shall schedule and hold the hearing before the youth's term of probation expires.

30

