

1 SENATE BILL NO. 110

2 INTRODUCED BY BECK

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND
6 HUMAN SERVICES TO ESTABLISH PARENTAL CONTRIBUTIONS TOWARD A YOUTH'S CARE, CUSTODY,
7 AND TREATMENT; PROVIDING FOR AN ASSIGNMENT OF CHILD SUPPORT; AMENDING SECTIONS
8 40-4-204, 41-3-403, 41-3-406, 41-5-403, AND 41-5-523, MCA; AND PROVIDING AN IMMEDIATE
9 EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 40-4-204, MCA, is amended to read:

14 **"40-4-204. Child support -- orders to address health insurance -- withholding of child support. (1)**

15 In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall
16 order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary
17 for the child's support, without regard to marital misconduct.

18 (2) The court shall consider all relevant factors, including:

19 (a) the financial resources of the child;

20 (b) the financial resources of the custodial parent;

21 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

22 (d) the physical and emotional condition of the child and the child's educational and medical needs;

23 (e) the financial resources and needs of the noncustodial parent;

24 (f) the age of the child;

25 (g) the cost of day care for the child;

26 (h) any custody arrangement that is ordered or decided upon; and

27 (i) the needs of any person, other than the child, whom either parent is legally obligated to support.

28 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall
29 determine the child support obligation by applying the standards in this section and the uniform child
30 support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

1 The guidelines must be used in all cases, including cases in which the order is entered upon the default of
2 a party and those in which the parties have entered into an agreement regarding the support amount. A
3 verified representation of the defaulting parent's income, based on the best information available, may be
4 used when a parent fails to provide financial information for use in applying the guidelines. The amount
5 determined under the guidelines is presumed to be an adequate and reasonable support award, unless the
6 court finds by clear and convincing evidence that the application of the standards and guidelines is unjust
7 to the child or to any of the parties or is inappropriate in that particular case.

8 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall
9 state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have
10 agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the
11 guideline amount must include a statement of the amount of support that would have ordinarily been
12 ordered under the guidelines.

13 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for
14 the child's support, the court shall state its reasons for not ordering child support.

15 (4) Each temporary or final district court judgment, decree, or order establishing a child support
16 obligation under this title and each modification of a final order for child support must include a medical
17 support order as provided for in Title 40, chapter 5, part 8.

18 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception
19 is included in the support order, a support obligation established by judgment, decree, or order under this
20 section, whether temporary or final, and each modification of an existing support obligation under 40-4-208
21 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part
22 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides
23 for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the
24 payment of support without need for an amendment to the support order or for any further action by the
25 court.

26 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order
27 must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's
28 income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to
29 include a warning statement in a judgment or order does not preclude the use of withholding procedures.

30 (c) If a support order subject to income withholding is expressed in terms of a monthly obligation,

1 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's
2 regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this
3 section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's
4 monthly support obligation if the excess support is a result of annualized withholding.

5 (6) For the purposes of income withholding under subsection (5), each district court judgment,
6 decree, or order that establishes or modifies a child support obligation must include a provision requiring
7 the parent obligated to pay support to inform the court and, if the department of public health and human
8 services is providing services under Title IV-D of the Social Security Act for the enforcement of the
9 judgment, decree, or order, the department, of the following:

10 (a) the name and address of the parent's current employer;

11 (b) whether the parent has access to health insurance through an employer or other group; and

12 (c) if insurance coverage is available, the health insurance policy information.

13 (7) Each district court judgment, decree, or order establishing a final child support obligation under
14 this part and each modification of a final order for child support must contain a statement that the order
15 is subject to review and modification by the department of public health and human services upon the
16 request of the department or a party under 40-5-271 through 40-5-273 when the department is providing
17 services under Title IV-D of the Social Security Act for the enforcement of the order.

18 (8) (a) A district court judgment, decree, or order that establishes or modifies a child support
19 obligation must include a provision requiring the child support to be paid to:

20 (i) the legal custodian of the minor child;

21 (ii) (A) any other person, organization, or agency having legal physical custody of the minor child
22 under a legal assignment of rights; or

23 (B) the court for the benefit of the minor child;

24 (iii) any other person or agency designated as caretaker of the minor child by agreement of the legal
25 custodian; or

26 (iv) any assignee or other person, organization, or agency authorized to receive or collect child
27 support.

28 (b) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject
29 to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order
30 or for any further action by the court.

1 (c) A judgment, decree, or order that establishes or modifies a child support obligation must include
2 a provision that if a parent or guardian is the obligee under a child support order and is obligated to pay a
3 contribution for the same child under 41-3-406, 41-5-403, or 41-5-523, the parent or guardian assigns and
4 transfers to the department all rights that the parent or guardian may have to child support that are not
5 otherwise assigned under 53-2-613."

6
7 **Section 2.** Section 41-3-403, MCA, is amended to read:

8 **"41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for
9 temporary investigative authority and protective services, the court may issue an order granting relief that
10 may be required for the immediate protection of the youth.

11 (b) The order, along with the petition and supporting documents, must be served by a peace officer
12 or a representative of the department on the person or persons named in the order. When the youth is
13 placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian,
14 or other person having legal custody of the youth, at the time the placement is made or as soon after
15 placement as possible.

16 (c) The order must require the person served to comply immediately with the terms of the order
17 or to appear before the court issuing the order on the date specified and show cause why the person has
18 not complied with the order. The show cause hearing must be conducted within 20 days of the issuance
19 of the order by the judge or a master appointed by the judge. The person filing the petition has the burden
20 of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise
21 provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the
22 affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2,
23 chapter 4, part 6, that results from adverse licensing action taken by the department.

24 (d) Upon a failure to comply or show cause, the court may hold the person in contempt or place
25 temporary legal custody of the youth with the department until further order.

26 (2) The court may grant the following kinds of relief:

27 (a) right of entry by a peace officer or department worker;

28 (b) medical and psychological evaluation of the youth or parents, guardians, or person having legal
29 custody;

30 (c) requirement that the youth, parents, guardians, or person having legal custody receive

1 counseling services;

2 (d) placement of the youth in a temporary medical facility or a facility for protection of the youth;

3 (e) requirement that the parents, guardian, or other person having legal custody furnish services
4 that the court may designate;

5 (f) inquiry into the financial ability of the parents, guardian, or other person having legal custody
6 of the youth to contribute to the costs for the care, custody, and treatment of the youth and;

7 (i) requirement of a contribution for those costs pursuant to the requirements of 41-3-406(3)
8 through ~~(6)~~ (8); or

9 (ii) referral of the matter to the department for establishment of a contribution order as provided
10 for in 41-3-406(9);

11 (g) other temporary disposition that may be required in the best interest of the youth that does not
12 require an expenditure of money by the department unless the department is notified and a court hearing
13 is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all
14 family, insurance, and other resources have been examined."

15

16 **Section 3.** Section 41-3-406, MCA, is amended to read:

17 **"41-3-406. Dispositional hearing -- contributions by parents or guardians for youth's care.** (1) If
18 a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making
19 any of the following dispositions to protect the welfare of the youth:

20 (a) permit the youth to remain with the youth's parents or guardian, subject to those conditions
21 and limitations the court may prescribe;

22 (b) grant an order of limited emancipation to a youth who is 16 years of age or older as provided
23 in 41-3-408;

24 (c) transfer legal custody to any of the following:

25 (i) the department;

26 (ii) a child-placing agency that is willing and able to assume responsibility for the education, care,
27 and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide
28 care of the youth; or

29 (iii) a relative or other individual who, after study by the department or a licensed child-placing
30 agency designated by the court, is found by the court to be qualified to receive and care for the youth;

1 (d) order any party to the action to do what is necessary to give effect to the final disposition,
2 including undertaking medical and psychological evaluations, treatment, and counseling that does not
3 require an expenditure of money by the department unless the department is notified and a court hearing
4 is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all
5 family, insurance, and other resources have been examined.

6 (e) order further care and treatment as the court considers in the best interest of the youth that
7 does not require an expenditure of money by the department unless the department is notified and a court
8 hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort
9 after all family, insurance, and other resources have been examined.

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

14 (3) If the court determines that the youth's parents or guardians are financially able to pay a
15 contribution as provided in subsection (2), the court shall order the youth's parents or guardians to pay ~~an~~
16 a specified amount or an amount determined by the department based on the uniform child support
17 guidelines adopted by the department ~~of public health and human services~~ pursuant to 40-5-209.

18 (4) A parent's or guardian's liability for contributions begins to accrue from the date the youth is
19 removed from the home and continues until the youth is returned to the parent or guardian, the youth
20 becomes emancipated, or the liability is terminated by order of the court.

21 (5) (a) A parent or guardian who is ordered to pay a contribution for a youth under this section
22 assigns to the department all rights to a child support order for that youth that are not otherwise assigned
23 under 53-2-613. The assignment of a child support obligation:

24 (i) is effective for both current and accrued support;

25 (ii) takes effect on the date the youth is transferred to the custody of the department; and

26 (iii) remains in effect for as long as the youth lawfully remains in custody of the department and
27 until all arrears that are owed prior to the termination of the department's custody are paid.

28 (b) The assigned child support obligation is in addition to the parent's or guardian's contribution
29 determined under subsection (3) or (9), if applicable.

30 (c) The assigned child support obligation may be retained by the department in an amount sufficient

1 to reimburse the costs for the youth's care that remain after the obligation has been satisfied.

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

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

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

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

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

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

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

19 (d) An alternative arrangement must:

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

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

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

24 ~~(5)(7)~~ Upon a showing of a change in the financial ability of the youth's parents or guardians to
25 pay, the court may modify its order for the payment of contributions required under subsection (3) or the
26 parent or guardian may apply to the department for an administrative modification provided for in Title 40,
27 chapter 5, part 2.

28 ~~(6)(8)~~ (a) If the court orders the payment of contributions under this section or the department
29 orders the payment of contributions under subsection (9), the department shall apply to the department of
30 public health and human services for support enforcement services shall collect and enforce the contribution

1 order pursuant to Title IV-D of the Social Security Act.

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

5 (9) Upon a court order for commitment that does not contain an amount of a contribution or a
6 referral by the court to determine an amount of a contribution, as provided in subsection (3), the
7 department may determine, establish, and order the youth's parent or guardian to pay a contribution as
8 provided for in subsection (2) using the procedure provided in Title 40, chapter 5, part 2, for establishing
9 a child support order."

10

11 **Section 4.** Section 41-5-403, MCA, is amended to read:

12 **"41-5-403. Disposition permitted under informal adjustment -- contributions by parents or**
13 **guardians for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

14 (a) probation;

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

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

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

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

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

23 (a) age of the youth;

24 (b) ability of the youth to pay;

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

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

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

30 (3) If the youth violates an aftercare agreement as provided for in 52-5-126, the youth must be

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

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

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

12 (6) A parent's or guardian's liability for contributions begins to accrue from the date the youth is
13 removed from the home and continues until the youth is returned to the parent or guardian, the youth
14 becomes emancipated, or the liability is terminated by order of the court.

15 (7) (a) A parent or guardian who is ordered to pay a contribution for a youth under this section
16 assigns to the state agency with financial responsibility for the youth all rights to a child support order for
17 the same youth that are not otherwise assigned under 53-2-613. The assignment of a child support
18 obligation:

19 (i) is effective for both current and accrued support;

20 (ii) takes effect on the date the youth is placed in substitute care; and

21 (iii) remains in effect for as long as the youth lawfully remains in substitute care and until all arrears
22 that are owed prior to the termination of substitute care are paid.

23 (b) The assigned child support obligation is in addition to the parent's or guardian's contribution
24 determined under subsection (5) or (11), if applicable.

25 (c) The assigned child support obligation may be retained by the state agency with financial
26 obligation for the youth in an amount sufficient to reimburse the costs for the substitute care that remain
27 after the obligation has been satisfied.

28 (8) Upon a showing of a change in the financial ability of the youth's parent or guardian to pay,
29 the court may modify its order for the payment of contributions required under subsection (5) or the parent
30 or guardian may apply to the department of public health and human services for an administrative

1 modification provided for in Title 40, chapter 5, part 2.

2 ~~(6)(9)~~ (a) Except as provided in subsection ~~(6)(b)~~ (9)(b), contributions ordered under this section
3 and each modification of an existing order are enforceable by immediate or delinquency income withholding,
4 or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section
5 is nevertheless subject to withholding for the payment of the contribution without need for an amendment
6 of the support order or for any further action by the court.

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

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

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

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

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

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

19 (d) An alternative arrangement must:

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

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

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

24 ~~(7)(10)~~ (a) If the court orders the payment of contributions under this section or the department of
25 public health and human services orders the payment of contributions under subsection (11), the
26 department shall apply to the department of public health and human services for support enforcement
27 services pursuant to Title IV-D of the Social Security Act.

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

1 (11) Upon a court order for commitment to the department that does not contain an amount of a
 2 contribution or a referral by the court for the department of public health and human services to determine
 3 an amount of a contribution as provided in subsection (5), the department may refer the matter to the
 4 department of public health and human services to determine, establish, and order the youth's parent or
 5 guardian to pay a contribution as provided for in subsection (2) using the procedure provided in Title 40,
 6 chapter 5, part 2, for establishing a child support order. The department of public health and human
 7 services shall provide support enforcement services for contribution orders established under this section."

8
 9 **Section 5.** Section 41-5-523, MCA, is amended to read:

10 **"41-5-523. Disposition -- sentence to correctional facility -- commitment to department --**
 11 **placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth
 12 in need of supervision, the youth court may enter its judgment making one or more of the following
 13 dispositions:

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

15 (b) place the youth on probation;

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

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

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

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

30 (i) the court shall determine whether continuation in the youth's own home would be contrary to

1 the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need
2 for removal of the youth from the youth's home;

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

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

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

12 (i) require the performance of community service;

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

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

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

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

24 (n) commit the youth to a mental health facility if, based upon the testimony of a professional
25 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in
26 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

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

29 (ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement in or sentencing
30 to a state youth correctional facility must be moved to a more appropriate placement in response to the

1 youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

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

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

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

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

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

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

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

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

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

25 (d) case management of the youth.

26 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time
27 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in
28 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of
29 the evaluation, except as provided in subsection (5). A county may contract with the department or other
30 public or private agencies to obtain evaluation services ordered by the court.

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

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

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

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

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

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

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

24 (12) A parent's or guardian's liability for contributions begins to accrue from the date the youth
25 is removed from the home and continues until the youth is returned to the parent or guardian, the youth
26 becomes emancipated, or the liability is terminated by order of the court.

27 (13) (a) A parent or guardian who is ordered to pay a contribution for a youth under this section
28 assigns to the state agency all rights to a child support order for that youth that are not otherwise assigned
29 under 53-2-613. The assignment of a child support obligation:

30 (i) is effective for both current and accrued support;

1 (ii) takes effect on the date the youth is placed in substitute care; and

2 (iii) remains in effect for as long as the youth lawfully remains in substitute care and until all arrears
3 that are owed prior to the termination of substitute care are paid.

4 (b) The assigned child support obligation is in addition to the parent's or guardian's contribution
5 determined under subsection (11) or (17), if applicable.

6 (c) The assigned child support obligation may be retained by the state agency with financial
7 responsibility for the youth in an amount sufficient to reimburse the costs for the substitute care that remain
8 after the obligation has been satisfied.

9 ~~(12)(14)~~ (a) Except as provided in subsection ~~(12)(b)~~ (14)(b), contributions ordered under this
10 section and each modification of an existing order are enforceable by immediate or delinquency income
11 withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with
12 this section is nevertheless subject to withholding for the payment of the contribution without need for an
13 amendment of the support order or for any further action by the court.

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

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

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

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

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

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

26 (d) An alternative arrangement must:

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

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

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

1 ~~(13)~~(15) Upon a showing of a change in the financial ability of the youth's parents or guardians to
 2 pay, the court may modify its order for the payment of contributions required under subsection (11) or the
 3 parent or guardian may apply to the department of public health and human services for an administrative
 4 modification provided for in Title 40, chapter 5, part 2.

5 ~~(14)~~(16) (a) If the court orders the payment of contributions under this section or the department
 6 of public health and human services orders the payment of contributions under subsection (17), the
 7 department shall apply to the department of public health and human services for support enforcement
 8 services pursuant to Title IV-D of the Social Security Act.

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

12 (17) Upon a court order for commitment to the department that does not contain an amount of a
 13 contribution or a referral by the court for the department of public health and human services to determine
 14 an amount of a contribution as provided in subsection (11), the department may refer the matter to the
 15 department of public health and human services to determine, establish, and order the youth's parent or
 16 guardian to pay the contribution provided for in subsection (10) using the procedure provided in Title 40,
 17 chapter 5, part 2, for establishing a child support order. The department of public health and human
 18 services shall provide support enforcement services for contribution orders established under this section."

19
 20 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.

21 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0110, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing the Department of Public Health and Human Services (DPHHS) to establish parental contributions toward a youth's care, custody, and treatment, and providing for an assignment of child support.

ASSUMPTIONS:

1. There would be a net annual increase of \$24,000 in child support collections to pay the cost of foster care in the 1999 biennium.
2. Child support collections would offset other foster care funding sources (general fund, county special revenue, county funds which are used to pay a portion of foster care costs and which are budgeted as state special revenue, and federal funds).
3. The funding splits for general fund, state special revenue, and federal funds are assumed to continue in the same proportion that these funds are budgeted for foster care benefits in the 1999 biennium (i.e., 45.00% general fund, 18.19% county funds, and 36.81% federal funds during fiscal 1998 and 45.94% general fund, 17.56% county funds, and 36.50% federal funds during fiscal year 1999).
4. A net reduction of \$4,366 county funds (\$24,000 X 18.19%) in fiscal 1998 and \$4,214 (\$24,000 X 17.56%) in fiscal 1999 would be reflected in state special revenue, and replaced by a like amount of state special revenue child support collections. Therefore, the net increase in state special revenue during fiscal 1998 would be \$19,634 (\$24,000 - \$4,366) and during fiscal 1999 would be \$19,786 (\$24,000 - \$4,214).
5. Assume the Department of Corrections (DoC) proposal to grant approximately \$5.4 million of juvenile placement funds to Judicial Districts is approved.
6. Assume that in the granting process, the DoC will allow money collected by the Judicial Districts from parental contributions (not including funds collected for child support) to remain in the Judicial Districts to develop community-based prevention services for at-risk juveniles.

FISCAL IMPACT:

Department of Public Health and Human Services

Expenditures: No impact.

	<u>FY98</u>	<u>FY99</u>
<u>Funding:</u>	<u>Difference</u>	<u>Difference</u>
General Fund	(\$10,802)	(\$11,026)
State Special Revenue (Child Support Collections)	24,000	24,000
State Special Revenue (County Funds)	(4,366)	(4,214)
Federal Funds	<u>(8,832)</u>	<u>(8,760)</u>
Total	0	0

Revenues:

State Special Revenue (Child Support Collections)	24,000	24,000
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Net Impact on Fund Balance: (Revenues minus expenditures)

General Fund	10,802	11,026
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Department of Corrections

No fiscal impact.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

County expenditures for foster care will be reduced by \$4,366 in fiscal year 1998 and \$4,214 in fiscal year 1999.

Dave Lewis 1-16-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Tom Beck 1/16/97
 TOM BECK, PRIMARY SPONSOR DATE

Fiscal Note for SB0110, as introduced

SB 110

1 SENATE BILL NO. 110

2 INTRODUCED BY BECK

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND
6 HUMAN SERVICES TO ESTABLISH PARENTAL CONTRIBUTIONS TOWARD A YOUTH'S CARE, CUSTODY,
7 AND TREATMENT; PROVIDING FOR AN ASSIGNMENT OF CHILD SUPPORT; AMENDING SECTIONS
8 40-4-204, 41-3-403, 41-3-406, 41-5-403, AND 41-5-523, MCA; AND PROVIDING AN IMMEDIATE
9 EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 40-4-204, MCA, is amended to read:

14 **"40-4-204. Child support -- orders to address health insurance -- withholding of child support.** (1)

15 In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall
16 order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary
17 for the child's support, without regard to marital misconduct.

18 (2) The court shall consider all relevant factors, including:

- 19 (a) the financial resources of the child;
- 20 (b) the financial resources of the custodial parent;
- 21 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;
- 22 (d) the physical and emotional condition of the child and the child's educational and medical needs;
- 23 (e) the financial resources and needs of the noncustodial parent;
- 24 (f) the age of the child;
- 25 (g) the cost of day care for the child;
- 26 (h) any custody arrangement that is ordered or decided upon; and
- 27 (i) the needs of any person, other than the child, whom either parent is legally obligated to support.

28 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall
29 determine the child support obligation by applying the standards in this section and the uniform child
30 support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

1 The guidelines must be used in all cases, including cases in which the order is entered upon the default of
2 a party and those in which the parties have entered into an agreement regarding the support amount. A
3 verified representation of the defaulting parent's income, based on the best information available, may be
4 used when a parent fails to provide financial information for use in applying the guidelines. The amount
5 determined under the guidelines is presumed to be an adequate and reasonable support award, unless the
6 court finds by clear and convincing evidence that the application of the standards and guidelines is unjust
7 to the child or to any of the parties or is inappropriate in that particular case.

8 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall
9 state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have
10 agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the
11 guideline amount must include a statement of the amount of support that would have ordinarily been
12 ordered under the guidelines.

13 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for
14 the child's support, the court shall state its reasons for not ordering child support.

15 (4) Each temporary or final district court judgment, decree, or order establishing a child support
16 obligation under this title and each modification of a final order for child support must include a medical
17 support order as provided for in Title 40, chapter 5, part 8.

18 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception
19 is included in the support order, a support obligation established by judgment, decree, or order under this
20 section, whether temporary or final, and each modification of an existing support obligation under 40-4-208
21 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part
22 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides
23 for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the
24 payment of support without need for an amendment to the support order or for any further action by the
25 court.

26 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order
27 must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's
28 income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to
29 include a warning statement in a judgment or order does not preclude the use of withholding procedures.

30 (c) If a support order subject to income withholding is expressed in terms of a monthly obligation,

1 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's
2 regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this
3 section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's
4 monthly support obligation if the excess support is a result of annualized withholding.

5 (6) For the purposes of income withholding under subsection (5), each district court judgment,
6 decree, or order that establishes or modifies a child support obligation must include a provision requiring
7 the parent obligated to pay support to inform the court and, if the department of public health and human
8 services is providing services under Title IV-D of the Social Security Act for the enforcement of the
9 judgment, decree, or order, the department, of the following:

- 10 (a) the name and address of the parent's current employer;
11 (b) whether the parent has access to health insurance through an employer or other group; and
12 (c) if insurance coverage is available, the health insurance policy information.

13 (7) Each district court judgment, decree, or order establishing a final child support obligation under
14 this part and each modification of a final order for child support must contain a statement that the order
15 is subject to review and modification by the department of public health and human services upon the
16 request of the department or a party under 40-5-271 through 40-5-273 when the department is providing
17 services under Title IV-D of the Social Security Act for the enforcement of the order.

18 (8) (a) A district court judgment, decree, or order that establishes or modifies a child support
19 obligation must include a provision requiring the child support to be paid to:

- 20 (i) the legal custodian of the minor child;
21 (ii) (A) any other person, organization, or agency having legal physical custody of the minor child
22 under a legal assignment of rights; or
23 (B) the court for the benefit of the minor child;
24 (iii) any other person or agency designated as caretaker of the minor child by agreement of the legal
25 custodian; or
26 (iv) any assignee or other person, organization, or agency authorized to receive or collect child
27 support.

28 (b) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject
29 to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order
30 or for any further action by the court.

1 (c) A judgment, decree, or order that establishes or modifies a child support obligation must include
 2 a provision that if a parent or guardian is the obligee under a child support order and is obligated to pay a
 3 contribution for the same child under 41-3-406, 41-5-403, or 41-5-523, the parent or guardian assigns and
 4 transfers to the department all rights that the parent or guardian may have to child support that are not
 5 otherwise assigned under 53-2-613."

6
 7 **Section 2.** Section 41-3-403, MCA, is amended to read:

8 **"41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for
 9 temporary investigative authority and protective services, the court may issue an order granting relief that
 10 may be required for the immediate protection of the youth.

11 (b) The order, along with the petition and supporting documents, must be served by a peace officer
 12 or a representative of the department on the person or persons named in the order. When the youth is
 13 placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian,
 14 or other person having legal custody of the youth, at the time the placement is made or as soon after
 15 placement as possible.

16 (c) The order must require the person served to comply immediately with the terms of the order
 17 or to appear before the court issuing the order on the date specified and show cause why the person has
 18 not complied with the order. The show cause hearing must be conducted within 20 days of the issuance
 19 of the order by the judge or a master appointed by the judge. The person filing the petition has the burden
 20 of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise
 21 provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the
 22 affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2,
 23 chapter 4, part 6, that results from adverse licensing action taken by the department.

24 (d) Upon a failure to comply or show cause, the court may hold the person in contempt or place
 25 temporary legal custody of the youth with the department until further order.

26 (2) The court may grant the following kinds of relief:

27 (a) right of entry by a peace officer or department worker;

28 (b) medical and psychological evaluation of the youth or parents, guardians, or person having legal
 29 custody;

30 (c) requirement that the youth, parents, guardians, or person having legal custody receive

1 counseling services;

2 (d) placement of the youth in a temporary medical facility or a facility for protection of the youth;

3 (e) requirement that the parents, guardian, or other person having legal custody furnish services
4 that the court may designate;

5 (f) inquiry into the financial ability of the parents, guardian, or other person having legal custody
6 of the youth to contribute to the costs for the care, custody, and treatment of the youth and;

7 (i) requirement of a contribution for those costs pursuant to the requirements of 41-3-406(3)
8 through ~~(6)~~ (8); or

9 (ii) referral of the matter to the department for establishment of a contribution order as provided
10 for in 41-3-406(9);

11 (g) other temporary disposition that may be required in the best interest of the youth that does not
12 require an expenditure of money by the department unless the department is notified and a court hearing
13 is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all
14 family, insurance, and other resources have been examined."

15

16 **Section 3.** Section 41-3-406, MCA, is amended to read:

17 **"41-3-406. Dispositional hearing -- contributions by parents or guardians for youth's care.** (1) If
18 a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making
19 any of the following dispositions to protect the welfare of the youth:

20 (a) permit the youth to remain with the youth's parents or guardian, subject to those conditions
21 and limitations the court may prescribe;

22 (b) grant an order of limited emancipation to a youth who is 16 years of age or older as provided
23 in 41-3-408;

24 (c) transfer legal custody to any of the following:

25 (i) the department;

26 (ii) a child-placing agency that is willing and able to assume responsibility for the education, care,
27 and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide
28 care of the youth; or

29 (iii) a relative or other individual who, after study by the department or a licensed child-placing
30 agency designated by the court, is found by the court to be qualified to receive and care for the youth;

1 (d) order any party to the action to do what is necessary to give effect to the final disposition,
 2 including undertaking medical and psychological evaluations, treatment, and counseling that does not
 3 require an expenditure of money by the department unless the department is notified and a court hearing
 4 is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all
 5 family, insurance, and other resources have been examined.

6 (e) order further care and treatment as the court considers in the best interest of the youth that
 7 does not require an expenditure of money by the department unless the department is notified and a court
 8 hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort
 9 after all family, insurance, and other resources have been examined.

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

14 (3) If the court determines that the youth's parents or guardians are financially able to pay a
 15 contribution as provided in subsection (2), the court shall order the youth's parents or guardians to pay ~~an~~
 16 a specified amount or an amount determined by the department. IN EITHER CASE, THE AMOUNT MUST
 17 BE based on the uniform child support guidelines adopted by the department of public health and human
 18 services pursuant to 40-5-209.

19 (4) A parent's or guardian's liability for contributions begins to accrue from the date the youth is
 20 removed from the home and continues until the youth is returned to the parent or guardian, the youth
 21 becomes emancipated, or the liability is terminated by order of the court.

22 (5) (a) A parent or guardian who is ordered to pay a contribution for a youth under this section
 23 assigns to the department all rights to a child support order for that youth that are not otherwise assigned
 24 under 53-2-613. The assignment of a child support obligation;

25 (i) is effective for both current and accrued support;

26 (ii) takes effect on the date the youth is transferred to the custody of the department; and

27 (iii) remains in effect for as long as the youth lawfully remains in custody of the department and
 28 until all arrears that are owed prior to the termination of the department's custody are paid.

29 (b) The assigned child support obligation is in addition to the parent's or guardian's contribution
 30 determined under subsection (3) or (9), if applicable.

1 (c) The assigned child support obligation may be retained by the department in an amount sufficient
 2 to reimburse the costs for the youth's care that remain after the obligation has been satisfied.

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

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

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

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

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

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

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

20 (d) An alternative arrangement must:

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

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

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

25 ~~(5)(7)~~ Upon a showing of a change in the financial ability of the youth's parents or guardians to
 26 pay, the court may modify its order for the payment of contributions required under subsection (3) or the
 27 parent or guardian may apply to the department for an administrative modification provided for in Title 40,
 28 chapter 5, part 2. A MODIFICATION MUST BE BASED UPON THE UNIFORM CHILD SUPPORT GUIDELINES
 29 ADOPTED BY THE DEPARTMENT PURSUANT TO 40-5-209.

30 ~~(6)(8)~~ (a) If the court orders the payment of contributions under this section or the department

1 orders the payment of contributions under subsection (9), the department shall apply to the department of
 2 public health and human services for support enforcement services shall collect and enforce the contribution
 3 order pursuant to Title IV-D of the Social Security Act.

4 (b) The department ~~of public health and human services~~ may collect and enforce a contribution
 5 order and an assignment of a child support obligation, if applicable, under this section by any means
 6 available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

7 (9) Upon a court order for commitment that does not contain an amount of a contribution or a
 8 referral by the court to determine an amount of a contribution, as provided in subsection (3), the
 9 department may determine, establish, and order the youth's parent or guardian to pay a contribution as
 10 provided for in subsection (2) using the procedure provided in Title 40, chapter 5, part 2, for establishing
 11 a child support order."

12
 13 **Section 4.** Section 41-5-403, MCA, is amended to read:

14 **"41-5-403. Disposition permitted under informal adjustment -- contributions by parents or**
 15 **guardians for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

16 (a) probation;

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

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

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

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

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

25 (a) age of the youth;

26 (b) ability of the youth to pay;

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

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

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

1 any loss may not be considered in any case.

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

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

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

14 (6) A parent's or guardian's liability for contributions begins to accrue from the date the youth is
15 removed from the home and continues until the youth is returned to the parent or guardian, the youth
16 becomes emancipated, or the liability is terminated by order of the court.

17 (7) (a) A parent or guardian who is ordered to pay a contribution for a youth under this section
18 assigns to the state agency with financial responsibility for the youth all rights to a child support order for
19 the same youth that are not otherwise assigned under 53-2-613. The assignment of a child support
20 obligation:

21 (i) is effective for both current and accrued support;

22 (ii) takes effect on the date the youth is placed in substitute care; and

23 (iii) remains in effect for as long as the youth lawfully remains in substitute care and until all arrears
24 that are owed prior to the termination of substitute care are paid.

25 (b) The assigned child support obligation is in addition to the parent's or guardian's contribution
26 determined under subsection (5) or (11), if applicable.

27 (c) The assigned child support obligation may be retained by the state agency with financial
28 obligation for the youth in an amount sufficient to reimburse the costs for the substitute care that remain
29 after the obligation has been satisfied.

30 (8) Upon a showing of a change in the financial ability of the youth's parent or guardian to pay,

1 the court may modify its order for the payment of contributions required under subsection (5) or the parent
 2 or guardian may apply to the department of public health and human services for an administrative
 3 modification provided for in Title 40, chapter 5, part 2. A MODIFICATION MUST BE BASED UPON THE
 4 UNIFORM CHILD SUPPORT GUIDELINES ADOPTED BY THE DEPARTMENT OF PUBLIC HEALTH AND
 5 HUMAN SERVICES PURSUANT TO 40-5-209.

6 ~~(6)(9)~~ (a) Except as provided in subsection ~~(6)(b)~~ (9)(b), contributions ordered under this section
 7 and each modification of an existing order are enforceable by immediate or delinquency income withholding,
 8 or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section
 9 is nevertheless subject to withholding for the payment of the contribution without need for an amendment
 10 of the support order or for any further action by the court.

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

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

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

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

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

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

23 (d) An alternative arrangement must:

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

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

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

28 ~~(7)(10)~~ (a) If the court orders the payment of contributions under this section or the department of
 29 public health and human services orders the payment of contributions under subsection (11), the
 30 department shall apply to the department of public health and human services for support enforcement

1 services pursuant to Title IV-D of the Social Security Act.

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

5 (11) Upon a court order for commitment to the department that does not contain an amount of a
6 contribution or a referral by the court for the department of public health and human services to determine
7 an amount of a contribution as provided in subsection (5), the department may refer the matter to the
8 department of public health and human services to determine, establish, and order the youth's parent or
9 guardian to pay a contribution as provided for in subsection (2) using the procedure provided in Title 40,
10 chapter 5, part 2, for establishing a child support order. The department of public health and human
11 services shall provide support enforcement services for contribution orders established under this section."
12

13 **Section 5.** Section 41-5-523, MCA, is amended to read.

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

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

19 (b) place the youth on probation;

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

26 (d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and
27 46-23-506;

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

1 an in-state residence unless the department informs the judge that resources are available for placement
2 of the youth at that residence.

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

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

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

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

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

16 (i) require the performance of community service;

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

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

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

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

28 (n) commit the youth to a mental health facility if, based upon the testimony of a professional
29 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in
30 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

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

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

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

7 (2) When a youth is committed to the department, the department shall determine the appropriate
8 placement and rehabilitation program for the youth after considering the recommendations made under
9 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

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

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

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

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

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

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

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

29 (d) case management of the youth.

30 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time

1 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in
2 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of
3 the evaluation, except as provided in subsection (5). A county may contract with the department or other
4 public or private agencies to obtain evaluation services ordered by the court.

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

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

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

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

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

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

23 (11) If the court determines that the youth's parents or guardians are financially able to pay a
24 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay
25 ~~an~~ a specified amount or an amount determined by the department of public health and human services.
26 IN EITHER CASE, THE AMOUNT MUST BE based on the uniform child support guidelines adopted by the
27 department of public health and human services pursuant to 40-5-209.

28 (12) A parent's or guardian's liability for contributions begins to accrue from the date the youth
29 is removed from the home and continues until the youth is returned to the parent or guardian, the youth
30 becomes emancipated, or the liability is terminated by order of the court.

1 (13) (a) A parent or guardian who is ordered to pay a contribution for a youth under this section
 2 assigns to the state agency all rights to a child support order for that youth that are not otherwise assigned
 3 under 53-2-613. The assignment of a child support obligation:

4 (i) is effective for both current and accrued support;

5 (ii) takes effect on the date the youth is placed in substitute care; and

6 (iii) remains in effect for as long as the youth lawfully remains in substitute care and until all arrears
 7 that are owed prior to the termination of substitute care are paid.

8 (b) The assigned child support obligation is in addition to the parent's or guardian's contribution
 9 determined under subsection (11) or (17), if applicable.

10 (c) The assigned child support obligation may be retained by the state agency with financial
 11 responsibility for the youth in an amount sufficient to reimburse the costs for the substitute care that remain
 12 after the obligation has been satisfied.

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

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

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

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

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

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

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

30 (d) An alternative arrangement must:

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

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

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

5 ~~(13)~~(15) Upon a showing of a change in the financial ability of the youth's parents or guardians to
6 pay, the court may modify its order for the payment of contributions required under subsection (11) or the
7 parent or guardian may apply to the department of public health and human services for an administrative
8 modification provided for in Title 40, chapter 5, part 2. A MODIFICATION MUST BE BASED UPON THE
9 UNIFORM CHILD SUPPORT GUIDELINES ADOPTED BY THE DEPARTMENT OF PUBLIC HEALTH AND
10 HUMAN SERVICES PURSUANT TO 40-5-209.

11 ~~(14)~~(16) (a) If the court orders the payment of contributions under this section or the department
12 of public health and human services orders the payment of contributions under subsection (17), the
13 department shall apply to the department of public health and human services for support enforcement
14 services pursuant to Title IV-D of the Social Security Act.

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

18 (17) Upon a court order for commitment to the department that does not contain an amount of a
19 contribution or a referral by the court for the department of public health and human services to determine
20 an amount of a contribution as provided in subsection (11), the department may refer the matter to the
21 department of public health and human services to determine, establish, and order the youth's parent or
22 guardian to pay the contribution provided for in subsection (10) using the procedure provided in Title 40,
23 chapter 5, part 2, for establishing a child support order. The department of public health and human
24 services shall provide support enforcement services for contribution orders established under this section."

25
26 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

27 -END-

1 SENATE BILL NO. 110

2 INTRODUCED BY BECK

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND
6 HUMAN SERVICES TO ESTABLISH PARENTAL CONTRIBUTIONS TOWARD A YOUTH'S CARE, CUSTODY,
7 AND TREATMENT; PROVIDING FOR AN ASSIGNMENT OF CHILD SUPPORT; AMENDING SECTIONS
8 40-4-204, 41-3-403, 41-3-406, 41-5-403, AND 41-5-523, MCA; AND PROVIDING AN IMMEDIATE
9 EFFECTIVE DATE."

10
11 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.**