

**Unofficial Draft Copy**

As of: July 23, 2008 (10:32am)

LC0198

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act revising the youth court act; requiring a youth to be represented by an attorney at a detention hearing unless the right to an attorney is waived after consulting with an attorney; amending sections 41-5-331 and 41-5-333, MCA."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 41-5-331, MCA, is amended to read:

**"41-5-331. Rights of youth taken into custody -- questioning -- waiver of rights.** (1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of intervention, the following requirements must be met:

(a) The youth must be advised of the youth's right against self-incrimination and the youth's right to counsel.

(b) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent

efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth may waive the rights listed in subsection (1) under the following situations:

(a) when the youth is 16 years of age or older, the youth may make an effective waiver, subject to the provisions of 41-5-333(2);

(b) when the youth is under 16 years of age and the youth and the youth's parent or guardian agree, they may make an effective waiver, subject to the provisions of 41-5-333(2); or

(c) when the youth is under 16 years of age and the youth and the youth's parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel."

{*Internal References to 41-5-331:*  
*OK 41-5-1503*}

**Section 2.** Section 41-5-333, MCA, is amended to read:

**"41-5-333. Custody -- hearing for probable cause -- procedure.** (1) At a probable cause hearing held pursuant to 41-5-332, the youth must be informed of the youth's constitutional rights and the youth's rights under this chapter.

(2) A youth must be represented by counsel at a probable cause hearing unless the right to counsel is waived after consultation with an attorney prior to the hearing.

~~(2)~~(3) A parent, guardian, or custodian of the youth may be held in contempt of court for failing to be present at or to participate in the probable cause hearing unless the parent,

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guardian, or custodian:

(a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or

(b) is excused by the court for good cause.

~~(3)~~(4) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-1411."

{*Internal References to 41-5-333: None.*}

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