

HOUSE BILL NO. 739

INTRODUCED BY S. MENDENHALL

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING CONTROL OF YOUTH COURT PLACEMENT FUNDS AND RELATED DUTIES TO THE SUPREME COURT FROM THE DEPARTMENT OF CORRECTIONS; PROVIDING ADDITIONAL DUTIES FOR YOUTH COURTS; CLARIFYING THE COMPOSITION OF THE YOUTH COURT PLACEMENT COMMITTEES AND THE COST CONTAINMENT REVIEW PANEL; REMOVING THE VOLUNTARY PARTICIPATION IN THE JUVENILE DELINQUENCY INTERVENTION PROGRAM BY JUDICIAL DISTRICTS; TRANSFERRING CONTROL OF THE COST CONTAINMENT FUND AND OVERSIGHT OF THE COST CONTAINMENT REVIEW PANEL TO THE SUPREME COURT FROM THE DEPARTMENT OF CORRECTIONS; PROVIDING FOR THE TRANSFER OF FUNDS AND FOR THE PAYMENT OF LIMITED ADMINISTRATION EXPENSES BY THE YOUTH COURT PLACEMENT FUND; DESCRIBING A SCOPE OF POLICIES FOR USE OF THE YOUTH COURT PLACEMENT FUND; REMOVING FROM THE DEPARTMENT OF CORRECTIONS CERTAIN DUTIES RELATED TO YOUTH COURT PLACEMENT; PROVIDING FOR A FUND TRANSFER TO THE YOUTH COURT PLACEMENT FUND AND CONTINGENCY FUND; DEFINING YOUTH DIVISION STAFF TO INCLUDE CERTAIN FINANCIAL SPECIALISTS; PROVIDING AN APPROPRIATION FOR JUVENILE PAROLE; AMENDING SECTIONS 3-1-702, 41-5-103, 41-5-121, 41-5-124, 41-5-125, 41-5-130, 41-5-131, 41-5-132, 41-5-1503, 41-5-1512, 41-5-1513, 41-5-1522, 41-5-2003, 41-5-2005, 41-5-2006, 52-5-109, AND 53-1-203, MCA; REPEALING SECTION 41-5-123, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 3-1-702, MCA, is amended to read:

"3-1-702. Duties. The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature, including the costs of the state-funded district court program and the youth court placement fund, established under 41-5-130, of which the cost containment fund, established under 41-5-132, is a component;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts

1 and provide the information to the legislature on request;

2 (3) recommend to the supreme court improvements in the judiciary;

3 (4) administer legal assistance for indigent victims of domestic violence, as provided in 3-2-714;

4 (5) administer state funding for district courts, as provided in chapter 5, part 9;

5 (6) administer the judicial branch personnel plan; and

6 (7) perform other duties that the supreme court may assign."

7
8 **Section 2.** Section 41-5-103, MCA, is amended to read:

9 **"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise,
10 the following definitions apply:

11 (1) "Adult" means an individual who is 18 years of age or older.

12 (2) "Agency" means any entity of state or local government authorized by law to be responsible for the
13 care or rehabilitation of youth.

14 (3) "Assessment officer" means a person who is authorized by the court to provide initial intake and
15 evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

16 (4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.

17 (5) "Correctional facility" means a public or private, physically secure residential facility under contract
18 with the department and operated solely for the purpose of housing adjudicated delinquent youth.

19 (6) "Cost containment funds" means funds retained by the ~~department~~ supreme court under 41-5-132
20 for distribution by the cost containment review panel.

21 (7) "Cost containment review panel" means the panel established in 41-5-131.

22 (8) "Court", when used without further qualification, means the youth court of the district court.

23 (9) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to
24 41-5-206.

25 (10) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth
26 has been given but does not include a person who has only physical custody.

27 (11) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana
28 Youth Court Act as a youth:

29 (a) who has committed an offense that, if committed by an adult, would constitute a criminal offense;

30 or

(b) who has been placed on probation as a delinquent youth or a youth in need of intervention and who has violated any condition of probation.

(12) "Department" means the department of corrections provided for in 2-15-2301.

(13) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under ~~41-5-1512(1)(e)~~ or 41-5-1513(1)(b) or who are under parole supervision. Department records do not include information provided by the department to the department of public health and human services' management information system.

(14) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(15) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(16) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(17) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(18) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(19) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(20) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(21) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

(22) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(23) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

(24) "Judge", when used without further qualification, means the judge of the youth court.

(25) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(26) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(27) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(28) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(29) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than a custodial parent's home, for purposes other than preadjudicatory detention. The term does not include shelter care or emergency placement of less than 45 days.

(30) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(31) "Probable cause hearing" means the hearing provided for in 41-5-332.

(32) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(33) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(34) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(35) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(36) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(37) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(38) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

(39) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(40) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder.

(41) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(42) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (42)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(43) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(44) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1201.

(45) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

(46) "Youth care facility" has the meaning provided in 52-2-602.

(47) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court judge, probation officers, and assessment officers.

(48) (a) "Youth court records" means information or data, either in written or electronic form, maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, youth assessment materials, predispositional studies, and supervision records of probationers.

(b) Youth court records do not include information provided by the youth court to the department of public health and human services' management information system.

(49) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a colocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

(50) "Youth in need of intervention" means a youth who is adjudicated as a youth and who commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding alcoholic beverages;

(b) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 3. Section 41-5-121, MCA, is amended to read:

"41-5-121. Youth placement committees -- purpose -- composition. (1) In each judicial district, the youth court shall establish a youth placement committee for the purposes of:

(a) recommending an appropriate placement of a youth referred to the youth court or the department under 41-5-1512 and 41-5-1513; or

(b) recommending available community services or alternative placements whenever a change is required in the placement of a youth who is currently in the custody of the department under ~~41-5-1512 or~~ 41-5-1513. However, the committee may not substitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility.

(2) (a) The committee consists of not less than five members and must include persons who are knowledgeable about the youth, treatment and placement options, and other resources appropriate to address the needs of the youth.

(b) The committee must include:

(i) a juvenile parole officer employed by and appointed by the department;

(ii) a representative of the department of public health and human services;

(iii) the chief probation officer or the chief probation officer's designee, who is the presiding officer of the committee;

(iv) a mental health professional; and

(v) if an Indian youth is involved, a person, preferably an Indian, knowledgeable about Indian culture and Indian family matters.

(c) The committee may include:

(i) a representative of a school district located within the boundaries of the judicial district who has knowledge of and experience with youth;

(ii) the youth's parent or guardian;

(iii) a youth services provider; and

(iv) the youth's probation officer.

(3) Committee members serve without compensation.

(4) ~~Notwithstanding the provisions of 41-5-123, the~~ The committee may be convened by the youth court judge, the department, or the probation officer of the youth court.

(5) If a representative of the school district within the boundaries of which the youth is recommended to be placed and will be attending school is not included on the committee, the person who convened the committee shall inform the school district of the final placement decision for the youth.

(6) The ~~department supreme court~~ may not disburse funds from the ~~budget allocation youth court placement~~ accounts established pursuant to 41-5-130 unless the youth court has established a youth placement committee as provided in this section.

Section 4. Section 41-5-124, MCA, is amended to read:

"41-5-124. Temporary and emergency placements -- limit. (1) A youth court may make a temporary placement of a youth in a shelter care facility or an emergency placement of a youth in a youth care facility is exempt from the requirements of 41-5-123 without convening a youth placement committee.

(2) If a temporary or emergency placement of a youth continues for 45 or more days, the ~~department youth court~~ shall refer the placement of the youth to the appropriate youth placement committee for review. The committee shall ~~make a recommendation~~ provide in writing to the youth court the committee's primary and alternative recommendations for placement ~~to of the youth court in accordance with 41-5-123.~~

Section 5. Section 41-5-125, MCA, is amended to read:

"41-5-125. Confidentiality of youth placement committee meetings and records. (1) Meetings of a youth placement committee are closed to the public to protect a youth's right to individual privacy.

(2) Information presented to the committee about a youth and committee records are confidential and subject to confidentiality requirements established by ~~rule by the department~~ supreme court policy.

Section 6. Section 41-5-130, MCA, is amended to read:

"41-5-130. ~~Participating and nonparticipating jurisdictions~~ Youth court placement fund established -- purposes. (1) ~~Each judicial district may elect to participate in the juvenile delinquency intervention program.~~ There is a youth court placement fund under the control of the supreme court. Legislative appropriations for the youth court placement fund are restricted to the purposes of the fund, except that no more than 0.5% of the appropriation for the youth court placement fund may be used for administration.

(2) ~~A jurisdiction that elects to participate in the program may expend funds from a juvenile~~ Money in the youth court placement fund may be used for out-of-home placements or for other services intended to reduce or prevent juvenile delinquency subject to restrictions in this chapter and administrative ~~rules~~ policy adopted by the ~~department~~ supreme court.

(3) ~~A jurisdiction that does not elect to participate in the program may commit youth to the department for out-of-home placements pursuant to this chapter.~~

~~(4) A jurisdiction that has not previously participated in the program may elect to participate in the program prior to the start of a new biennium. Participation must be for a complete biennium. A jurisdiction may elect to discontinue participation in future bienniums upon 3 months' written notice to the department prior to the beginning of the next biennium.~~

~~(5) A youth court that does not participate in the program may not expend any juvenile placement funds for placements or services unless approved by the department pursuant to 41-5-123.~~

~~(6)(3) The department supreme court shall establish an a youth court placement account for each judicial district in order to administer a juvenile placement fund as appropriated by the legislature. The supreme court shall distribute money from the youth court placement fund to the accounts, which The accounts must be used by the youth courts for funding out-of-home placements."~~

Section 7. Section 41-5-131, MCA, is amended to read:

"41-5-131. Cost containment review panel. (1) The ~~department~~ supreme court shall establish a cost containment review panel.

(2) The cost containment review panel ~~shall consist~~ consists of the following members, with the members referred to in subsections (2)(c) through (2)(g) appointed by the department supreme court:

(a) ~~two members~~ a member from the department of corrections appointed by the director;

(b) a member from the department of public health and human services appointed by the director;

(c) a representative from the field of mental health;

(d) a youth court judge;

(e) two chief juvenile probation officers;

(f) a county commissioner; and

(g) a representative of the youth justice council.

(3) Decisions of the cost containment review panel must be by majority vote.

(4) The cost containment review panel shall determine the distribution of funds allocated in 41-5-132.

(5) The cost containment review panel may evaluate the effectiveness of new or innovative programs for the treatment of troubled youth and make recommendations to the youth courts and the department.

(6) A youth court shall request funds from the cost containment review panel prior to exceeding its account allocation under 41-5-130. If a panel member referred to in subsections (2)(d) through (2)(g) is a resident of or is employed in the judicial district of a youth court requesting cost containment funds, the panel member may not serve as a panel member for purposes of a decision regarding disbursement of cost containment funds to the youth court and an alternate panel member must be appointed by the ~~department~~ supreme court for purposes of the decision."

Section 8. Section 41-5-132, MCA, is amended to read:

"41-5-132. Cost containment fund -- allocation of appropriated funds -- use of funds. (1) ~~The department of corrections shall establish a~~ A cost containment fund is established for the purposes of 41-5-131. The supreme court ~~and~~ shall allocate to the fund not less than \$1 million each fiscal year from the funds appropriated for the juvenile youth court placement budget fund ~~for the fiscal each~~ biennium ~~beginning July 1, 2001,~~ to be used for the purposes of 41-5-131.

(2) The ~~department~~ supreme court shall determine the amount of the cost containment fund at the beginning of each fiscal year. The cost containment review panel shall submit a recommended amount to be allocated to the cost containment fund at least 1 month prior to the start of a new fiscal year."

Section 9. Section 41-5-1503, MCA, is amended to read:

"41-5-1503. Medical or psychological evaluation of youth -- urinalysis. (1) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-331. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (2). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

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

(3) Subject to ~~41-5-1512(1)(e)(i)~~ 41-5-1512(2)(o)(i), the youth court may not order an evaluation or placement of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is listed under 41-5-206.

(4) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-208 or 41-5-1605 or the jurisdiction of the youth court is terminated following the filing of an information in district court pursuant to 41-5-206.

(5) In a proceeding alleging a youth to be a delinquent youth, upon a finding of an offense related to use of alcohol or illegal drugs, the court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using alcoholic beverages or illegal drugs."

Section 10. Section 41-5-1512, MCA, is amended to read:

"41-5-1512. Disposition of youth in need of intervention or youth who violate consent adjustments. (1) If a youth is found to be a youth in need of intervention or to have violated a consent adjustment, the youth court shall first determine whether a continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home.

(2) After making a determination pursuant to subsection (1), the youth court may enter its judgment making one or more of the following dispositions:

(a) place the youth on probation. The youth court shall retain jurisdiction in a disposition under this subsection.

(b) place the youth in a residence that ensures that the youth is accountable, that provides for rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee.

(c) commit the youth to ~~the department in jurisdictions that do not participate in the juvenile delinquency intervention program or to the youth court in jurisdictions that participate in the juvenile delinquency intervention program for the purposes of funding youth court for placement in~~ a private, out-of-home, residential placement subject to the conditions in 41-5-1522; ~~In an order committing a youth to the department or to the youth court, the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home.~~

1 (d) order restitution for damages that result from the offense for which the youth is disposed by the youth
2 or by the person that contributed to the delinquency of the youth;

3 (e) require the performance of community service;

4 (f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth
5 to receive counseling services;

6 (g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or
7 the persons having legal custody of the youth;

8 (h) require the parents, guardians, or other persons having legal custody of the youth to furnish services
9 the court may designate;

10 (i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and
11 the community;

12 (j) subject to the provisions of 41-5-1504, commit the youth to a mental health facility if, based upon the
13 testimony of a professional person as defined in 53-21-102, the court finds that the youth is found to be suffering
14 from a mental disorder, as defined in 53-21-102, and meets the criteria in 53-21-126(1);

15 (k) place the youth under home arrest as provided in Title 46, chapter 18, part 10;

16 (l) order confiscation of the youth's driver's license, if the youth has one, by the probation officer for a
17 specified period of time, not to exceed 90 days. The probation officer shall notify the department of justice of the
18 confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving
19 record. The probation officer shall notify the department of justice when the confiscated driver's license has been
20 returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The
21 probation officer may, in the probation officer's discretion and with the concurrence of a parent or guardian,
22 return a youth's confiscated driver's license before the termination of the time period for which it had been
23 confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of
24 a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth,
25 nor may it be used as grounds for denying coverage for an accident or other occurrence under an existing policy.

26 (m) order the youth to pay a contribution covering all or a part of the costs for the adjudication,
27 disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision,
28 care, custody, and treatment of the youth, including the costs of counseling;

29 (n) order the youth to pay a contribution covering all or a part of the costs of a victim's counseling;

30 (o) defer imposition of sentence for up to 45 days for a placement evaluation at a suitable program or

1 facility with the following conditions:

2 (i) The court may not order placement for evaluation at a youth correctional facility of a youth who has
3 committed an offense that would not be a criminal offense if committed by an adult or a youth who has violated
4 a consent adjustment.

5 (ii) The placement for evaluation must be on a space-available basis at the county's expense, which is
6 not reimbursable under part 19 of this chapter.

7 (iii) The court may require the youth's parents or guardians to pay a contribution covering all or a part
8 of the costs of the evaluation if the court determines after an examination of financial ability that the parents or
9 guardians are able to pay the contribution. Any remaining unpaid costs of evaluation are the financial
10 responsibility of the judicial district of the court that ordered the evaluation.

11 (p) order placement of a youth in a youth assessment center for up to 10 days;

12 (q) order the youth to participate in mediation that is appropriate for the offense committed.

13 ~~(2)(3)~~ The court may not order a local government entity to pay for care, treatment, intervention, or
14 placement. A court may order a local government entity to pay for evaluation and in-state transportation of a
15 youth.

16 ~~(3)(4)~~ The court may not order a state government entity to pay for care, treatment, intervention,
17 placement, or evaluation that results in a deficit in the account established for that district under 41-5-130 without
18 approval from the cost containment review panel."

19

20 **Section 11.** Section 41-5-1513, MCA, is amended to read:

21 **"41-5-1513. Disposition -- delinquent youth -- restrictions.** (1) If a youth is found to be a delinquent
22 youth, the youth court may enter its judgment making one or more of the following dispositions:

23 (a) any one or more of the dispositions provided in 41-5-1512;

24 (b) subject to 41-5-1504, ~~41-5-1512(1)(o)(i)~~ 41-5-1512(2)(o)(i), and 41-5-1522, commit the youth to the
25 department for placement in a state youth correctional facility and recommend to the department that the youth
26 not be released until the youth reaches 18 years of age. The court may not place a youth adjudicated delinquent
27 in a state youth correctional facility for an offense that would be a misdemeanor if committed by an adult unless
28 the court finds that the youth presents a danger to the public safety and that the placement is recommended by
29 a mental health professional after evaluation of the youth. The provisions of 41-5-355 relating to alternative
30 placements apply to placements under this subsection (1)(b).

(c) require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a sexual offense or violent offense, as defined in 46-23-502, if committed by an adult, to register as a sexual or violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection.

(d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a sex offense, the youth court may require completion of sex offender treatment before a youth is discharged.

(3) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may order a local government entity to pay for evaluation and in-state transportation of a youth.

(4) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under 41-5-130 without approval from the cost containment review panel."

Section 12. Section 41-5-1522, MCA, is amended to read:

"41-5-1522. Commitment to department -- restrictions on placement. When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under ~~41-5-123~~ by the youth placement committee. Placement is subject to the following limitations:

(1) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the power of the

1 department to enter into a parole agreement with the youth pursuant to 52-5-126.

2 (2) A youth may not be placed in or transferred to a state adult correctional facility or other facility used
3 for the execution of sentences of adults convicted of crimes.

4 (3) The department may not place a youth in need of intervention, a youth adjudicated delinquent for
5 commission of an act that would not be an offense if committed by an adult, or a youth who violates a consent
6 adjustment in a state youth correctional facility."

7
8 **Section 13.** Section 41-5-2003, MCA, is amended to read:

9 **"41-5-2003. Establishment of program -- department oversight duties.** (1) ~~(a)~~ There is a juvenile
10 delinquency intervention program.

11 ~~(b) Participation in the juvenile delinquency intervention program is voluntary.~~

12 (2) The ~~department and the youth~~ supreme court shall monitor the youth ~~court's account~~ court
13 placement accounts created under 41-5-130 to ensure that ~~the~~ a youth court does not exceed its allocated
14 account budget.

15 (3) Account funds not used by ~~the~~ a youth court for placements must be distributed to ~~participating~~ youth
16 courts in accordance with ~~rules adopted by the department~~ supreme court policy to be used for placement
17 alternatives and early intervention alternatives.

18 (4) The ~~department~~ supreme court shall provide technical assistance to each youth court for the
19 monitoring of account funds and the evaluation and development of placement alternatives and effective
20 intervention programming.

21 (5) The ~~department~~ supreme court shall review and monitor each youth court to enable the development
22 of placement alternatives by the youth courts and the development of early intervention alternatives by the youth
23 courts. The ~~department~~ supreme court shall report to the legislature on the results of its monitoring."

24
25 **Section 14.** Section 41-5-2005, MCA, is amended to read:

26 **"41-5-2005. ~~Judicial districts participating in juvenile delinquency intervention program -- youth~~**
27 **Youth placement committee to submit recommendation to department -- acceptance or rejection of**
28 **recommendation by department duties -- youth court response.** (1) Prior to commitment of a youth to the
29 custody of the youth court or to the department pursuant to 41-5-1512 or 41-5-1513, a youth placement
30 committee must be convened. The committee shall submit in writing to the youth court judge its primary and

1 alternative recommendations for placement of the youth.

2 (2) The committee shall first consider placement of the youth in a community-based facility or program
3 and shall give priority to placement of the youth in a facility or program located in the state of Montana.

4 (3) If in-state alternatives for placement of the youth are inappropriate, the committee may recommend
5 an out-of-state placement. The committee shall state in its recommendation the reasons why in-state services
6 are not appropriate.

7 (4) The primary and alternative recommendations of the youth placement committee must be for similar
8 facilities or programs. The youth court may require a youth placement committee to reevaluate a youth if the
9 recommended placements are dissimilar.

10 (5) If the youth court rejects both of the committee's recommendations, it shall promptly notify the
11 committee in writing of the reasons for rejecting the recommendations and shall make an appropriate placement
12 for the youth.

13 (6) The youth court may not order a placement or change of placement that results in a deficit in the
14 account established for that district under 41-5-130 without approval from the cost containment review panel.

15 (7) The youth court shall evaluate the cost of the placement or change of placement and ensure that
16 the placement or change of placement will not overspend the budget allocation provided by the ~~department~~
17 supreme court under 41-5-130.

18 ~~(8) This section applies only to those judicial districts that elect to participate in the juvenile delinquency~~
19 ~~intervention program administered by the department."~~

21 **Section 15.** Section 41-5-2006, MCA, is amended to read:

22 **"41-5-2006. Rulemaking authority Implementation authority.** (1) ~~The department shall adopt rules~~
23 As a condition for receiving money from the youth court placement fund created in 41-5-130, the supreme court
24 shall adopt policies necessary for the implementation of 41-5-130 through 41-5-132 and this part, including but
25 not limited to:

26 ~~(a) defining and establishing criteria for early intervention regarding troubled youth and the development~~
27 ~~of community alternatives;~~

28 ~~(b)~~(a) evaluating each youth court to ensure that the court is using early intervention strategies and
29 community alternatives and is effectively controlling costs for youth placements;

30 ~~(c) distributing unused account funds to the youth courts;~~

1 ~~———(d)(b) determining the allocation of funds from the youth court placement fund to the accounts for the~~
2 youth courts;

3 (c) distributing youth court placement funds to the youth courts;

4 ~~(e)(d) determining the amount of funds to be withheld by the department as cost containment funds;~~

5 (f)(e) providing accounting policies for administration of youth court placement funds and monitoring
6 and auditing each youth court to ensure that account funds are being used as required by law;

7 ~~(g)(f) distributing cost containment funds to youth courts;~~

8 (h)(g) monitoring youth courts to promote consistency and uniformity in the placement of juvenile
9 offenders;

10 ~~(i)(h) developing~~ adopting and implementing procedures for the operation of the cost containment
11 review panel;

12 ~~(j) developing one or more risk assessment tools; and~~

13 ~~———(k) developing procedures for removing youth with serious mental illness from the juvenile correctional~~
14 ~~system~~

15 (i) collecting, compiling in a biennial report to the legislature, and disseminating nonconfidential
16 information related to youth in need of intervention and delinquent youth;

17 (j) maintaining adequate data on youth court placements and expenditures to be able to report to the
18 legislature on placements funded for youth in need of intervention and delinquent youth; and

19 (k) administering any state or federal funds assigned to youth in need of intervention and youth
20 probation. Administration of the youth court placement fund and other funds identified under this subsection
21 (1)(k) may include developing any necessary memorandum of understanding.

22 (2) It is the intent of the legislature that ~~rules adopted by the department~~ policies adopted by the
23 supreme court encourage the use of local, regional, and state resources for the placement of troubled youth."
24

25 **Section 16.** Section 52-5-109, MCA, is amended to read:

26 **"52-5-109. Commitment expenses -- transportation costs -- arrangement for transportation. (1)**

27 The expenses of committing a youth to the department or to the youth court must be borne by the committing
28 youth court.

29 (2) (a) After adjudication, the costs of transporting a youth to and from an out-of-home placement within
30 the state must be paid ~~as follows:~~

1 ~~—— (i) in a jurisdiction that does not participate in the juvenile delinquency intervention program, the county~~
2 ~~shall pay the costs;~~

3 ~~—— (ii) in a jurisdiction that participates in the juvenile delinquency intervention program, by the youth court~~
4 ~~shall pay the costs~~ from the account established under 41-5-130 or out of county funds of the committing county.

5 (b) After adjudication, the costs of transporting a youth to and from an out-of-home placement in another
6 state must be paid by the youth court and must be paid for out of the account established under 41-5-130, except
7 that the department shall pay transportation costs in a case in which a youth is placed in an out-of-state
8 correctional facility pursuant to 41-5-355.

9 (3) The youth court probation office shall arrange for all transportation to and from an out-of-home
10 placement except when the youth is under the parole supervision of the department."
11

12 **Section 17.** Section 53-1-203, MCA, is amended to read:

13 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

14 (a) adopt rules necessary ~~to carry out the purposes of 41-5-123 through 41-5-125, rules necessary~~ for
15 the siting, establishment, and expansion of prerelease centers, and rules for the admission, custody, transfer,
16 and release of persons in department programs except as otherwise provided by law. However, rules adopted
17 by the department may not amend or alter the statutory powers and duties of the state board of pardons and
18 parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is
19 subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must
20 provide that a prerelease center may not be sited at any location without community support. The prerelease
21 siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism
22 for a determination of community support or objection to the siting of a prerelease center in the area determined
23 to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing
24 conducted pursuant to Title 2, chapter 3.

25 (b) subject to the functions of the department of administration, lease or purchase lands for use by
26 correctional facilities and classify those lands to determine those that may be most profitably used for agricultural
27 purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown
28 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the
29 persons confined in correctional facilities;

30 (c) contract with private, nonprofit Montana corporations to establish and maintain prerelease centers

1 for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for
2 release into the community, providing an alternative placement for offenders who have violated parole, and
3 providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less
4 restrictive environment than the prison while maintaining adequate security. The centers must be operated in
5 coordination with other department correctional programs. This subsection does not affect the department's
6 authority to operate and maintain prerelease centers.

7 (d) utilize the staff and services of other state agencies and units of the Montana university system,
8 within their respective statutory functions, to carry out its functions under this title;

9 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including
10 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed
11 in correctional facilities or programs;

12 (f) encourage the establishment of programs at the local and state level for the rehabilitation and
13 education of felony offenders;

14 (g) administer all state and federal funds allocated to the department for youth in need of intervention
15 and delinquent youth, as defined in 41-5-103 committed to the department;

16 ~~(h) collect and disseminate information relating to youth in need of intervention and delinquent youth;~~

17 ~~———(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed~~
18 ~~of the specific information, by category, related to youth in need of intervention and delinquent youth in~~
19 ~~out-of-home care facilities;~~

20 ~~———(j)(h) provide funding for placement and place youth who are adjudicated to be delinquent or in need~~
21 ~~of intervention and who are committed to the department;~~

22 ~~(k)(i)~~ administer youth correctional facilities;

23 ~~(l)(j)~~ provide supervision, care, and control of youth released from a state youth correctional facility; and

24 ~~(m)(k)~~ use to maximum efficiency the resources of state government in a coordinated effort to:

25 (i) provide for delinquent youth committed to the department; and

26 (ii) coordinate and apply the principles of modern correctional administration to the facilities and
27 programs administered by the department.

28 (2) The department and a private, nonprofit Montana corporation may not enter into a contract under
29 subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-4-313 that limit the term of a contract
30 do not apply to a contract authorized by subsection (1)(c). Prior to entering into a contract for a period of 10

years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(3) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth correctional facilities."

NEW SECTION. Section 18. Fund transfer -- appropriations. (1) (a) The following money is transferred from the general fund on a biennial, restricted basis to the youth court placement fund:

| | Fiscal Year 2004 | Fiscal Year 2005 |
|----------------------|------------------|------------------|
| Probation Allocation | \$6,476,282 | \$6,476,282 |
| Contingency Fund | \$1,000,000 | \$1,000,000 |

(b) The following money in the state special revenue fund must be used for youth court placement:

| | Fiscal Year 2004 | Fiscal Year 2005 |
|----------------------|------------------|------------------|
| Probation Allocation | \$130,237 | \$130,237 |

(c) The following money in the federal special revenue fund must be used for youth court placement:

| | Fiscal Year 2004 | Fiscal Year 2005 |
|----------------------|------------------|------------------|
| Probation Allocation | \$59,372 | \$59,372 |

(2) The money in subsection (1) does not include appropriations to the department of corrections for juvenile parole. The following appropriations are for juvenile parole:

| | Fiscal Year 2004 | Fiscal Year 2005 |
|------------------------------|------------------|------------------|
| General Fund | \$235,444 | \$235,444 |
| State Special Revenue Fund | \$17,902 | \$17,902 |
| Federal Special Revenue Fund | \$11,067 | \$11,067 |

(3) Personal services and office costs for financial specialists described in [section 19] must be transferred from the department of corrections budget to the budget for supreme court operations.

NEW SECTION. Section 19. Youth division staff. (1) For the purposes of 3-5-901 (1) (a) (iv), youth

1 division offices staff includes financial specialists whose duties include fiscal accountability of the youth court
2 placement fund established under 41-5-130, identification and collection of cost of care contributions from
3 sources other than the youth court placement fund, and program support for youth courts. The judicial branch
4 personnel plan adopted under 3-1-130 applies to the financial specialists, who must receive state employee
5 benefits and expenses as provided in Title 2, chapter 18.

6 (2) Financial specialists may use state-owned equipment under policies adopted by the district court
7 council under 3-1-1602.

8
9 **NEW SECTION. Section 20. Coordination instruction.** If House Bill No. 2 is passed and approved
10 with an appropriation for juvenile probation and youth court placement, including the youth court placement
11 contingency amount, of \$7,665,891 for fiscal year 2004 and \$7,665,891 for fiscal year 2005, then [section 18
12 (1) of this act] is void. If House Bill No. 2 is passed and approved with an amount less than \$7,665,891 per year
13 for juvenile probation and youth court placement, including the youth court placement contingency amount, in
14 the 2005 biennium and if [this act] is passed and approved, then [section 18 (1) of this act] applies and the
15 provision in House Bill No. 2 for juvenile probation funding is void.

16
17 **NEW SECTION. Section 21. Codification instruction.** [Section 19] is intended to be codified as an
18 integral part of Title 3, chapter 5, part 9, and the provisions of Title 3, chapter 5, part 9, apply to [section 19].

19
20 **NEW SECTION. Section 22. Repealer.** Section 41-5-123, MCA, is repealed.

21
22 **NEW SECTION. Section 23. Effective date.** [This act] is effective July 1, 2003.

23 - END -