

HOUSE BILL NO. 404

INTRODUCED BY R. JORE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SCHOOL ENROLLMENT AND ATTENDANCE LAWS;  
5 ABOLISHING PROVISIONS REQUIRING A PARENT OR GUARDIAN TO ENROLL A CHILD IN SCHOOL AND  
6 PROVISIONS REQUIRING A CHILD TO ATTEND SCHOOL; ABOLISHING REQUIREMENTS FOR A  
7 NONPUBLIC OR HOME SCHOOL; ALLOWING A STUDENT TO NOT ATTEND A CLASS OR ACTIVITY THAT  
8 IS NOT REQUIRED FOR GRADUATION; AMENDING SECTIONS 20-1-308, 20-3-206, 20-4-302, 20-4-402,  
9 20-5-111, 20-5-201, 20-7-435, 41-5-103, 41-5-1203, AND 45-8-361, MCA; REPEALING SECTIONS 20-5-102,  
10 20-5-103, 20-5-104, 20-5-105, 20-5-106, 20-5-107, 20-5-108, AND 20-5-109, MCA; AND PROVIDING AN  
11 IMMEDIATE EFFECTIVE DATE."

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13 WHEREAS, children are properly the wards of parents and guardians, not of the state, and compulsory  
14 attendance laws presuppose just the opposite; and

15 WHEREAS, the Legislature recognizes that responsibility, both legally and before God, for the education  
16 of children lies with the parents and guardians, not with the state; therefore, the parents and guardians, not the  
17 state, must be able to exercise authority over the education of their children; and

18 WHEREAS, there are no Montana constitutional provisions warranting compulsory attendance statutes,  
19 making the statutes of questionable validity and inviting tension among parents, guardians, lawmakers, educators,  
20 and law-enforcement officers; and

21 WHEREAS, compulsory attendance laws are doubtful contributors to the literacy rate of the state, it being  
22 evident that mere attendance at a school does not constitute education or guarantee the acquisition of literary  
23 skills, nor does absence from school preclude a child's development of academic skills; thus, compulsory  
24 attendance satisfies no compelling interest of the state.

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

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28 **Section 1.** Section 20-1-308, MCA, is amended to read:  
29 **"20-1-308. Religious instruction released time program.** (1) The trustees of a school district may  
30 provide for a religious instruction released time program under which a pupil may be released from regular school



1 attendance for the purpose of receiving religious instruction upon written request, renewed at least annually, of  
 2 the pupil's parent or guardian. The trustees shall determine the amount of time for which a pupil may be released  
 3 for religious instruction.

4 (2) A religious instruction released time program may not be established or administered in such a way  
 5 that public school property is ~~utilized~~ used for the purpose of religious instruction.

6 (3) Public money may not be used, directly or indirectly, for the religious instruction.

7 (4) ~~Any~~ A period for which a pupil is released under a religious instruction released time program is part  
 8 of the school day and week for purposes of 20-1-301, 20-1-302, ~~20-5-103~~, 20-9-311, and all other provisions of  
 9 Title 20, and the release may not adversely affect the pupil's attendance record."

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11 **Section 2.** Section 20-3-206, MCA, is amended to read:

12 **"20-3-206. Additional positions.** In the capacity as county superintendent, the county superintendent  
 13 shall also serve as:

14 (1) the ~~chairman~~ presiding officer of the county transportation committee, as prescribed by 20-10-131;  
 15 and

16 (2) ~~an attendance officer for a district under the conditions prescribed by 20-5-104; and~~

17 ~~— (3) the clerk of a joint board of trustees under the conditions prescribed by 20-3-361."~~

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19 **Section 3.** Section 20-4-302, MCA, is amended to read:

20 **"20-4-302. Discipline and punishment of pupils -- definition of corporal punishment -- penalty --**  
 21 **defense.** (1) A teacher or principal has the authority to hold a pupil to a strict accountability for disorderly conduct  
 22 in school, on the way to or from school, or during intermission or recess.

23 (2) For the purposes of this section, "corporal punishment" means knowingly and purposely inflicting  
 24 physical pain on a pupil as a disciplinary measure.

25 (3) A person who is employed or engaged by a school district may not inflict or cause to be inflicted  
 26 corporal punishment on a pupil.

27 (4) (a) A person who is employed or engaged by a school district may use physical restraint, defined as  
 28 the placing of hands on a pupil in a manner that is reasonable and necessary to:

29 (i) quell a disturbance;

30 (ii) provide self-protection;

- 1 (iii) protect the pupil or others from physical injury;
- 2 (iv) obtain possession of a weapon or other dangerous object on the person of the pupil or within control  
3 of the pupil;
- 4 (v) maintain the orderly conduct of a pupil including but not limited to relocating a pupil in a waiting line,  
5 classroom, lunchroom, principal's office, or other on-campus facility; or
- 6 (vi) protect property from serious harm.
- 7 (b) Physical pain resulting from the use of physical restraint as defined in subsection (4)(a) does not  
8 constitute corporal punishment as long as the restraint is reasonable and necessary.
- 9 (5) A teacher in a district employing neither a district superintendent nor a principal at the school where  
10 the teacher is assigned has the authority to suspend a pupil for good cause. When either a district superintendent  
11 or a school principal is employed, only the superintendent or principal has the authority to suspend a pupil for  
12 good cause. Whenever a teacher suspends a pupil, the teacher shall notify the trustees and the county  
13 superintendent immediately of the action.
- 14 (6) A teacher has the duty to report the truancy or incorrigibility of a pupil to the district superintendent,  
15 the principal, the trustees, or the county superintendent, whichever is applicable.
- 16 (7) If a person who is employed or engaged by a school district uses corporal punishment or more  
17 physical restraint than is reasonable or necessary, the person is guilty of a misdemeanor and, upon conviction  
18 of the misdemeanor by a court of competent jurisdiction, shall be fined not less than \$25 or more than \$500.
- 19 (8) A person named as a defendant in an action brought under this section may assert as an affirmative  
20 defense that the use of physical restraint was reasonable or necessary. If that defense is denied by the person  
21 bringing the charge, the issue of whether the restraint used was reasonable or necessary must be determined  
22 by the trier of fact."

23

24 **Section 4.** Section 20-4-402, MCA, is amended to read:

25 **"20-4-402. Duties of district superintendent or county high school principal.** The district  
26 superintendent or county high school principal is the executive officer of the trustees and, subject to the direction  
27 and control of the trustees, the executive officer shall:

- 28 (1) ~~have~~ has general supervision of all schools of the district and the personnel employed by the district;
- 29 (2) shall implement and administer the policies of the trustees of the district;
- 30 (3) shall develop and recommend courses of instruction to the trustees for their consideration and

1 approval in accordance with the provisions of 20-7-111;

2 (4) shall select all textbooks and submit the selections to the trustees for their approval in accordance  
3 with the provisions of 20-7-602;

4 (5) shall select all reference and library books and submit the selections to the trustees for their approval  
5 in accordance with provisions of 20-7-204;

6 (6) ~~have~~ has general supervision of all pupils of the district, ~~enforce the compulsory attendance~~  
7 ~~provisions of this title,~~ and ~~have~~ has the authority to suspend for good cause a pupil of the district;

8 (7) shall report the pupil attendance, absence, and enrollment of the district and other pupil information  
9 required by the report form prescribed by the superintendent of public instruction to the county superintendent;  
10 or to the county superintendents when reporting for a joint district; and

11 (8) shall perform other duties in connection with the district as the trustees may prescribe."  
12

13 **Section 5.** Section 20-5-111, MCA, is amended to read:

14 **"20-5-111. Responsibilities and rights of parent parents and guardians who provides provide**  
15 **home school.** Subject to the provisions of 20-5-109, a parent has Parents and guardians have the authority to  
16 instruct ~~his~~ their child, stepchild, or ward in a home school and ~~is~~ are solely responsible for:

- 17 (1) the educational philosophy of the home school;  
18 (2) the selection of instructional materials, curriculum, and textbooks;  
19 (3) the time, place, and method of instruction; and  
20 (4) the evaluation of the home school instruction."  
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22 **Section 6.** Section 20-5-201, MCA, is amended to read:

23 **"20-5-201. Duties and sanctions -- exception.** (1) A pupil ~~shall~~:

- 24 (a) shall comply with the policies of the trustees and the rules of the school that the pupil attends;  
25 (b) shall pursue the required course of instruction;  
26 (c) shall submit to the authority of the teachers, principal, and district superintendent of the district; and  
27 (d) ~~be~~ is subject to the control and authority of the teachers, principal, and district superintendent while  
28 the pupil is in school or on school premises, on the way to and from school, or during intermission or recess.

29 (2) A pupil who continually and willfully disobeys the provisions of this section, shows open defiance of  
30 the authority vested in school personnel by this section, defaces or damages any school building, school grounds,

1 furniture, equipment, book belonging to the district, or harms or threatens to harm another person or the person's  
2 property is liable for punishment, suspension, or expulsion under the provisions of this title. When a pupil defaces  
3 or damages school property the pupil's parent or guardian is liable for the cost of repair or replacement upon the  
4 complaint of the teacher, principal, superintendent, or any trustee and the proof of any damage.

5 (3) In addition to the sanctions prescribed in this section, the trustees of a high school district may deny  
6 a high school pupil the honor of participating in the graduation exercise or exclude a high school pupil from  
7 participating in school activities. The trustees may not take action under this subsection until the incident or  
8 infraction causing the consideration has been investigated and the trustees have determined that the high school  
9 pupil was involved in the incident or infraction.

10 (4) (a) A school district may withhold the grades, diploma, or transcripts of a pupil who is responsible  
11 for the cost of school materials or the loss or damage of school property until the pupil or the pupil's parent or  
12 guardian satisfies the obligation.

13 (b) A school district that decides to withhold a pupil's grades, diploma, or transcripts from the pupil and  
14 the pupil's parent or guardian pursuant to subsection (4)(a) shall:

15 (i) upon receiving notice that the pupil has transferred to another school district in the state, notify the  
16 pupil's parent or guardian in writing that the school district to which the pupil has transferred will be requested to  
17 withhold the pupil's grades, diploma, or transcripts until any obligation has been satisfied;

18 (ii) forward appropriate grades or transcripts to the school to which the pupil has transferred;

19 (iii) at the same time, notify the school district of any financial obligation of the pupil and request the  
20 withholding of the pupil's grades, diploma, or transcripts until any obligations are met;

21 (iv) when the pupil or the pupil's parent or guardian satisfies the obligation, inform the school district to  
22 which the pupil has transferred; and

23 (v) adopt a policy regarding a process for a pupil or the pupil's parent or guardian to appeal the school  
24 district's decision to request that another school district withhold a pupil's grades, diploma, or transcripts.

25 (c) Upon receiving notice that a school district has requested the withholding of the grades, diploma, or  
26 transcripts of a pupil under this subsection (4), a school district to which the pupil has transferred shall withhold  
27 the grades, diploma, or transcripts of the pupil until it receives notice, from the district that initiated the decision,  
28 that the decision has been rescinded under the terms of subsection (4)(a).

29 (5) A pupil may not be compelled to attend a class or activity that is not required for graduation if the pupil  
30 is excused from the class or activity by the pupil's parent or guardian."

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**Section 7.** Section 20-7-435, MCA, is amended to read:

**"20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-state residential treatment programs for eligible children.** (1) It is the intent of the legislature that eligible children in in-state children's psychiatric hospitals and residential treatment facilities be provided with an appropriate educational opportunity in a cost-effective manner, including the provision of a free appropriate public education for an eligible child with a disability that is consistent with state standards for the provision of special education and related services. General education programs for eligible children without disabilities must be provided in accordance with the requirements ~~for a nonpublic school under the provisions of 20-5-109 subsection~~ (7).

(2) The superintendent of public instruction may contract with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the hospital or treatment facility.

(3) Whenever the superintendent of public instruction contracts with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the children's psychiatric hospital or residential treatment facility, the superintendent of public instruction shall:

(a) ensure the provision of a free appropriate public education and an education that is consistent with the requirements ~~for a nonpublic school in 20-5-109~~ of subsection (7) for children attending the hospital or residential treatment facility;

(b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs for providing special education, including the costs of retirement benefits, federal social security system contributions, and unemployment compensation insurance;

(c) from appropriations provided for this purpose, fund any approved allowable costs under this section, with the exception of services for which reimbursement is made under any provision of state or federal law or an insurance policy;

(d) provide funding for allowable costs according to a proration based on average daily membership.

(4) A supplemental education fee or tuition may not be charged for an eligible Montana child who receives inpatient treatment and an education under contract with an in-state children's psychiatric hospital or residential treatment facility.

(5) If a children's psychiatric hospital or residential treatment facility fails to provide ~~an education in~~

1 ~~accordance with 20-5-109~~ or a free appropriate public education under the provisions of this part for an eligible  
 2 child at the children's psychiatric hospital or residential treatment facility or fails to negotiate a contract under the  
 3 provisions of subsection (2), the superintendent of public instruction shall negotiate with the school district in  
 4 which the children's psychiatric hospital or residential treatment facility is located for the supervision and  
 5 implementation of an appropriate educational program that is consistent with accreditation standards provided  
 6 for in 20-7-111 and with the provisions of 20-7-402 for children attending the children's psychiatric hospital or  
 7 residential treatment facility. The amount negotiated with the school district must include all education and related  
 8 services costs that may be negotiated under the provisions of subsection (3) and all education and related  
 9 services costs necessary to fulfill the requirements of providing the child with an education.

10 (6) Funds provided to a district under this section, including funds received under the provisions of  
 11 20-7-420:

12 (a) must be deposited in the miscellaneous programs fund of the district that provides the ~~education~~  
 13 educational program for an eligible child, regardless of the age or grade placement of the child who is served  
 14 under a negotiated contract; and

15 (b) are not subject to the budget limitations in 20-9-308.

16 (7) For the purposes of this section, an educational program in a psychiatric hospital or residential  
 17 treatment facility:

18 (a) shall maintain records on pupil attendance and disease immunization and make the records available  
 19 to the county superintendent of schools on request;

20 (b) shall provide at least 180 days of pupil instruction or the equivalent in accordance with 20-1-301 and  
 21 20-1-302;

22 (c) must be housed in a building that complies with applicable local health and safety regulations; and

23 (d) shall provide an organized course of study that includes instruction in the subjects required of public  
 24 schools as a basic instructional program pursuant to 20-7-111."

25

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

27 **"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise,  
 28 the following definitions apply:

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

30 (2) "Agency" means any entity of state or local government authorized by law to be responsible for the

1 care or rehabilitation of youth.

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

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

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

7 (6) "Cost containment funds" means funds retained by the department under 41-5-132 for distribution  
8 by the cost containment review panel.

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

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

11 (9) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to  
12 41-5-206.

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

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

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

18 (b) who has been placed on probation as a delinquent youth and who has violated any condition of  
19 probation.

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

21 (13) (a) "Department records" means information or data, either in written or electronic form, maintained  
22 by the department pertaining to youth who are committed under 41-5-1512(1)(c) or 41-5-1513(1)(b) or who are  
23 under parole supervision.

24 (b) Department records do not include information provided by the department to the department of  
25 public health and human services' management information system or information maintained by the youth court  
26 through the office of the court administrator.

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

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



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

2 (c) violation of a youth parole agreement.

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

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

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

9 (18) "Final disposition" means the implementation of a court order for the disposition or placement of a  
10 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.

11 (19) (a) "Formal youth court records" means information or data, either in written or electronic form, on  
12 file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes  
13 petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional studies.

14 (b) The term does not include information provided by the youth court to the department of public health  
15 and human services' management information system.

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

18 (21) "Guardian" means an adult:

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

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

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

24 ~~(23)~~(22) (a) "Holdover" means a room, office, building, or other place approved by the board of crime  
25 control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not  
26 to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate  
27 detention or shelter care facility.

28 (b) The term does not include a jail.

29 ~~(24)~~(23) (a) "Informal youth court records" means information or data, either in written or electronic form,  
30 maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and

1 includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and  
2 supervision records of probationers.

3 (b) The term does not include information provided by the youth court to the department of public health  
4 and human services' management information system.

5 ~~(25)~~(24) (a) "Jail" means a facility used for the confinement of adults accused or convicted of criminal  
6 offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after  
7 arrest.

8 (b) The term does not include a colocated juvenile detention facility that complies with 28 CFR, part 31.

9 ~~(26)~~(25) "Judge", when used without further qualification, means the judge of the youth court.

10 ~~(27)~~(26) "Juvenile home arrest officer" means a court-appointed officer administering or supervising  
11 juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

12 ~~(28)~~(27) "Law enforcement records" means information or data, either in written or electronic form,  
13 maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

14 ~~(29)~~(28) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction  
15 that gives a person the right and duty to:

16 (i) have physical custody of the youth;

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

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

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

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

22 ~~(30)~~(29) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

23 ~~(31)~~(30) (a) "Out-of-home placement" means placement of a youth in a program, facility, or home, other  
24 than a custodial parent's home, for purposes other than preadjudicatory detention.

25 (b) The term does not include shelter care or emergency placement of less than 45 days.

26 ~~(32)~~(31) (a) "Parent" means the natural or adoptive parent.

27 (b) The term does not include:

28 (i) a person whose parental rights have been judicially terminated; or

29 (ii) the putative father of an illegitimate youth unless the putative father's paternity is established by an  
30 adjudication or by other clear and convincing proof.

- 1           ~~(33)~~(32) "Probable cause hearing" means the hearing provided for in 41-5-332.
- 2           ~~(34)~~(33) "Regional detention facility" means a youth detention facility established and maintained by two  
3 or more counties, as authorized in 41-5-1804.
- 4           ~~(35)~~(34) "Restitution" means payments in cash to the victim or with services to the victim or the general  
5 community when these payments are made pursuant to a consent adjustment, consent decree, or other youth  
6 court order.
- 7           ~~(36)~~(35) "Running away from home" means that a youth has been reported to have run away from home  
8 without the consent of a parent or guardian or a custodian having legal custody of the youth.
- 9           ~~(37)~~(36) "Secure detention facility" means a public or private facility that:
- 10           (a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses  
11 or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and  
12           (b) is designed to physically restrict the movements and activities of youth or other individuals held in  
13 lawful custody of the facility.
- 14           ~~(38)~~(37) "Serious juvenile offender" means a youth who has committed an offense that would be  
15 considered a felony offense if committed by an adult and that is an offense against a person, an offense against  
16 property, or an offense involving dangerous drugs.
- 17           ~~(39)~~(38) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.
- 18           ~~(40)~~(39) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to  
19 the facilities enumerated in 41-5-347.
- 20           ~~(41)~~(40) "Short-term detention center" means a detention facility licensed by the department for the  
21 temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays,  
22 pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth  
23 assessment center, or shelter care facility.
- 24           ~~(42)~~(41) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or  
25 the Riverside youth correctional facility in Boulder.
- 26           ~~(43)~~(42) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing  
27 food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from  
28 or are without the care and supervision of their parents or guardians.
- 29           ~~(44)~~(43) "Victim" means:
- 30           (a) a person who suffers property, physical, or emotional injury as a result of an offense committed by

1 a youth that would be a criminal offense if committed by an adult;

2 (b) an adult relative of the victim, as defined in subsection (44)(a), if the victim is a minor; and

3 (c) an adult relative of a homicide victim.

4 ~~(45)~~(44) "Youth" means an individual who is less than 18 years of age without regard to sex or  
5 emancipation.

6 ~~(46)~~(45) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1203.

7 ~~(47)~~(46) "Youth assessment center" means a staff-secured location that is licensed by the department  
8 of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate  
9 and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing  
10 the youth's behavior.

11 ~~(48)~~(47) "Youth care facility" has the meaning provided in 52-2-602.

12 ~~(49)~~(48) "Youth court" means the court established pursuant to this chapter to hear all proceedings in  
13 which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court  
14 judge, probation officers, and assessment officers.

15 ~~(50)~~(49) "Youth detention facility" means a secure detention facility licensed by the department for the  
16 temporary substitute care of youth that is:

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

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

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

21 ~~(54)~~(50) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

22 (a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal  
23 offense, including but not limited to a youth who:

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

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

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

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2           **Section 9.** Section 41-5-1203, MCA, is amended to read:

3           **"41-5-1203. Preliminary inquiry -- youth assessment.** (1) The probation officer or assessment officer  
4 may perform a youth assessment if:

5           (a) a youth has been referred to the youth court as an alleged youth in need of intervention with a  
6 minimum of two misdemeanor offenses or three offenses in the past year that would not be offenses if the youth  
7 were an adult;

8           (b) the youth is alleged to be a youth in need of intervention or a delinquent youth and the youth or the  
9 youth's parents or guardian requests the youth assessment and both the youth and the parents or guardian are  
10 willing to cooperate with the assessment process; or

11           (c) the circumstances surrounding a youth who has committed an act that would be a felony if committed  
12 by an adult indicate the need for a youth assessment and the safety of the community has been considered in  
13 determining where the youth assessment is conducted.

14           (2) A youth assessment:

15           (a) must be a multidisciplinary effort that may include, but is not limited to a chemical dependency  
16 evaluation of the youth, an educational assessment of the youth, an evaluation to determine if the youth has  
17 mental health needs, or an assessment of the need for any family-based services or other services provided by  
18 the department of public health and human services or other state and local agencies. The education component  
19 of the youth assessment is intended to address attendance, behavior, and performance issues of the youth. The  
20 education component is not intended to interfere with the right to attend a nonpublic or home school that complies  
21 with 20-5-109.

22           (b) must include a summary of the family's strengths and needs as they relate to addressing the youth's  
23 behavior;

24           (c) may occur in a youth's home, with or without electronic monitoring, or pursuant to 41-5-343 in a youth  
25 assessment center licensed by the department of public health and human services or in any other entity licensed  
26 by the department of public health and human services. The county shall provide adequate security in other  
27 licensed entities through provision of additional staff or electronic monitoring. The staff provided by the county  
28 must meet licensing requirements applicable to the licensed entity in which the youth is being held.

29           (3) The assessment officer arranging the youth assessment shall work with the parent or guardian of  
30 the youth to coordinate the performance of the various parts of the assessment with any providers that may

1 already be working with the family or providers that are chosen by the family to the extent possible to meet the  
2 goals of the Youth Court Act."

3

4 **Section 10.** Section 45-8-361, MCA, is amended to read:

5 **"45-8-361. Possession or allowing possession of weapon in school building -- exceptions --**  
6 **penalties -- seizure and forfeiture or return authorized -- definitions.** (1) A person commits the offense of  
7 possession of a weapon in a school building if the person purposely and knowingly possesses, carries, or stores  
8 a weapon in a school building.

9 (2) A parent or guardian of a minor commits the offense of allowing possession of a weapon in a school  
10 building if the parent or guardian purposely and knowingly permits the minor to possess, carry, or store a weapon  
11 in a school building.

12 (3) (a) Subsection (1) does not apply to law enforcement personnel.

13 (b) The trustees of a district may grant persons and entities advance permission to possess, carry, or  
14 store a weapon in a school building.

15 (4) (a) A person convicted under this section shall be fined an amount not to exceed \$500, imprisoned  
16 in the county jail for a term not to exceed 6 months, or both. The court shall consider alternatives to incarceration  
17 that are available in the community.

18 (b) (i) A weapon in violation of this section may be seized and, upon conviction of the person possessing  
19 or permitting possession of the weapon, may be forfeited to the state or returned to the lawful owner.

20 (ii) If a weapon seized under the provisions of this section is subsequently determined to have been  
21 stolen or otherwise taken from the owner's possession without permission, the weapon must be returned to the  
22 lawful owner.

23 (5) As used in this section:

24 (a) "school building" means all buildings owned or leased by a local school district that are used for  
25 instruction or for student activities. The term does not include a home school provided for in ~~20-5-109~~ 20-5-111.

26 (b) "weapon" means any type of firearm, a knife with a blade 4 or more inches in length, a sword, a  
27 straight razor, a throwing star, nun-chucks, or brass or other metal knuckles. The term also includes any other  
28 article or instrument possessed with the purpose to commit a criminal offense."

29

30 NEW SECTION. **Section 11. Repealer.** Sections 20-5-102, 20-5-103, 20-5-104, 20-5-105, 20-5-106,

1 20-5-107, 20-5-108, and 20-5-109, MCA, are repealed.

2

3 NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval.

4 - END -