

HOUSE BILL NO. 146  
INTRODUCED BY J. SHOCKLEY  
BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE YOUTH COURT ACT TO GENERALLY REVISE LAWS RELATING TO THE DETENTION AND PLACEMENT OF YOUTH; CHANGING THE MEMBERSHIP OF YOUTH PLACEMENT COMMITTEES; CREATING AN INTERVENTION PROGRAM FOR JUVENILE DELINQUENTS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 41-5-103, 41-5-121, 41-5-122, 41-5-123, 41-5-124, 41-5-203, 41-5-205, 41-5-206, 41-5-1512, 41-5-1513, 52-5-109, AND 52-5-129, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

~~Section 1.~~ Section 17-7-502, MCA, is amended to read:

~~"17-7-502. Statutory appropriations -- definition -- requisites for validity.~~ (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

~~(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:~~

~~(a) The law containing the statutory authority must be listed in subsection (3).~~

~~(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.~~

~~(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-31-702; 15-34-115; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; [Section 16] [SECTION 21]; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-222; 80-4-416; 80-11-518; 81-5-111; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.~~

~~(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing;~~

~~paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; and pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005.)"~~

**Section 1.** Section 41-5-103, MCA, is amended to read:

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

- (1) "Adult" means an individual who is 18 years of age or older.
- (2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.
- (3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.
- (4) "Commit" means to transfer to legal custody of a youth to the department or to the youth court.
- (5) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.
- (6) "Court", when used without further qualification, means the youth court of the district court.
- (7) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.
- (8) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.
- (9) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:
  - (a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; 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.

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

(11) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed to the department under 41-5-1512(3) or 41-5-1513(1)(b) or (1)(c) 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.

(12) "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.

(13) "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.

(14) "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.

~~(14)~~(15) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

~~(15)~~(16) "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.

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

~~(17)~~(18) "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.

~~(18)~~(19) "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.

~~(19)~~(20) "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.

~~(20)~~(21) "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)~~(22) "Judge", when used without further qualification, means the judge of the youth court.

~~(22)~~(23) "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.

~~(23)~~(24) "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.

~~(24)~~(25) (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.

~~(25)~~(26) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

~~(26)~~(27) "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.

~~(27)~~(28) "Probable cause hearing" means the hearing provided for in 41-5-332.

~~(28)~~(29) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

~~(29)~~(30) "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.

~~(30)~~(31) "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.

~~(31)~~(32) "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.

~~(32)~~(33) "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.

~~(33)~~(34) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

~~(34)~~(35) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in ~~41-5-344~~ 41-5-347.

~~(35)~~(36) "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.

~~(36)~~(37) "State youth correctional facility" means ~~a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder.~~

~~(37)~~(38) "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.

~~(38)~~(39) "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 ~~(38)(a)~~ (39)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

~~(39)~~(40) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

~~(40)~~(41) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1201.

~~(41)~~(42) "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.

~~(42)~~(43) "Youth care facility" has the meaning provided in 41-3-1102.

~~(43)~~(44) "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, a youth in need of intervention, or a youth in need of care and includes the youth court judge, probation officers, and assessment officers.

~~(44)~~(45) "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. Youth court records do not include information provided by the youth court to the department of public health and human services' management information system.

~~(45)~~(46) "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 collocated 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.

~~(46)~~(47) "Youth in need of care" has the meaning provided for in 41-3-102.

~~(47)~~(48) "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 2.** Section 41-5-121, MCA, is amended to read:

**"41-5-121. Youth placement committees -- composition.** (1) In each judicial district, the ~~department~~ 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) Members may ~~The committee must~~ include:

~~(a)(i) two representatives of a juvenile parole officer employed by~~ the department;

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

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

~~(d)(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.

~~(e)(c)~~ The committee may include:

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

~~(f) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters;~~

~~(g)(ii) a the youth's parent or guardian; and~~

~~(h)(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 committee may be convened by 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 may not disburse funds from the budget allocation ~~subaccounts~~ ACCOUNTS established pursuant to ~~section 16~~ [SECTION 15] unless the youth court has established a youth placement committee as provided in this section."

**Section 3.** Section 41-5-122, MCA, is amended to read:

**"41-5-122. Duties of the youth placement committee.** A youth placement committee shall:

- (1) review all information relevant to the placement of a youth ~~referred or committed to the department;~~
- (2) consider available resources appropriate to meet the needs of the youth;
- (3) consider the treatment recommendations of any professional person who has evaluated the youth;
- (4) consider options for the financial support of the youth;
- (5) recommend in writing to the youth court judge ~~department~~ an appropriate placement for the youth, considering the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate for placement. A committee shall consider placement in a licensed facility, at a state youth correctional facility, or with a parent, other family member, or guardian.
- (6) review temporary and emergency placements as required under 41-5-124; and
- (7) conduct placement reviews at least ~~semiannually~~ every 6 months and at other times as requested by the youth court ~~department~~."

**Section 4.** Section 41-5-123, MCA, is amended to read:

**"41-5-123. Youth placement committee to submit recommendation to ~~department -- acceptance or rejection of recommendation by department~~ youth court.** (1) Prior to commitment of a youth to the custody of the youth court probation office or the department pursuant to 41-5-1512 or 41-5-1513, a youth placement committee must be convened. The committee shall submit in writing to the ~~department and to the youth court~~ judge its primary and alternative recommendations for placement of the youth.

(2) ~~If the department accepts either of the committee's recommendations, it shall promptly notify the committee in writing. The committee shall first consider placement of the youth in a community-based facility or program and shall give priority to placement of the youth in a facility or program located in the state of Montana.~~

(3) If in-state alternatives for placement of the youth are inappropriate, the committee may recommend an out-of-state placement. The committee shall state in its recommendation the reasons why in-state services



are not appropriate.

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

~~(3)~~(5) If the ~~department~~ youth court rejects both of the committee's recommendations, it shall promptly notify the committee in writing of the reasons for rejecting the recommendations and shall make an appropriate placement for the youth.

~~(4)~~(6) ~~Within 72 hours after making a decision on a placement or change of placement, the department shall notify the youth court of the decision and of the placement or change of placement~~ The youth court may not order a placement or change of placement that results in a deficit in the budget allocation from the department.

(7) The youth court shall evaluate the cost of the placement or change of placement and ensure that the placement or change of placement will not overspend the budget allocation provided by the department under ~~section 16~~ [SECTION 15].

~~(8) The department shall review and approve all youth placement committee recommendations for out-of-state residential placements. The youth court may not commit or place a youth in any out-of-state program or facility without the express written approval of the department."~~

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

**"41-5-124. Temporary and emergency placements -- limit.** (1) 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.

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

**Section 6.** Section 41-5-203, MCA, is amended to read:

**"41-5-203. Jurisdiction of court.** (1) Except as provided in subsection (2) and for cases filed in the district court under 41-5-206, the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of intervention, or a youth in need of care or concerning any person under 21 years of age charged with having violated any law of the state or any ordinance of a city or town other than a traffic or fish and game law prior to having become 18 years of

age.

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

(3) The court has jurisdiction to:

(a) transfer a youth court case to the district court after notice and hearing; ~~and~~

(b) with respect to extended jurisdiction juvenile cases:

(i) designate a proceeding as an extended jurisdiction juvenile prosecution;

(ii) conduct a hearing, receive admissions, and impose upon a youth who is adjudicated as an extended jurisdiction juvenile a sentence that may extend beyond the youth's age of majority;

(iii) stay that portion of an extended jurisdiction sentence that is extended beyond a youth's majority, subject to the performance of the juvenile portion of the sentence;

(iv) continue, modify, or revoke the stay after notice and hearing;

(v) after revocation, transfer execution of the stayed sentence to the department;

(vi) transfer supervision of any juvenile sentence if, after notice and hearing, the court determines by a preponderance of the evidence that the juvenile has violated or failed to perform the juvenile portion of an extended jurisdiction sentence; and

(vii) transfer a juvenile case to district court after notice and hearing; ~~and~~

(c) impose criminal sanctions on a juvenile as authorized by the Extended Jurisdiction Prosecution Act, Title 41, chapter 5, part 16."

**Section 7.** Section 41-5-205, MCA, is amended to read:

**"41-5-205. Retention of jurisdiction -- termination.** (1) The court may dismiss a petition or otherwise terminate jurisdiction on its own motion or on the motion or petition of any interested party at any time. Unless terminated by the court and except as provided in subsections (2) and (3), the jurisdiction of the court continues until the individual becomes 21 years of age.

(2) Court jurisdiction terminates when:

(a) the proceedings are transferred to district court under 41-5-208 or an information is filed concerning the offense in district court pursuant to 41-5-206;

(b) the youth is discharged by the department; or

(c) execution of a sentence is ordered under 41-5-1605(2)(b)(iii) and the supervisory responsibilities are transferred to the district court under 41-5-1605.

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

(4) The jurisdiction of the court is not terminated if the department issues a release from supervision due to the expiration of a commitment pursuant to 41-5-1522."

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

**"41-5-206. Filing in district court prior to formal proceedings in youth court.** (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

- (i) sexual intercourse without consent as defined in 45-5-503;
- (ii) deliberate homicide as defined in 45-5-102;
- (iii) mitigated deliberate homicide as defined in 45-5-103;
- (iv) assault on a peace officer or judicial officer as defined in 45-5-210; or
- (v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

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

- (i) negligent homicide as defined in 45-5-104;
- (ii) arson as defined in 45-6-103;
- (iii) aggravated assault as defined in 45-5-202;
- (iv) assault with a weapon as defined in 45-5-213;
- (v) robbery as defined in 45-5-401;
- (vi) burglary or aggravated burglary as defined in 45-6-204;
- (vii) aggravated kidnapping as defined in 45-5-303;
- (viii) possession of explosives as defined in 45-8-335;
- (ix) criminal distribution of dangerous drugs as defined in 45-9-101;
- (x) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
- (xi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts

enumerated in subsections (1)(b)(i) through (1)(b)(iii) and (1)(b)(v) through (1)(b)(xii);

(xii) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403;

(xiii) escape as defined in 45-7-306.

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

~~The county attorney may file with the district court a petition for leave to file an information in district court for an offense not listed in subsection (1) if the offense was committed by a youth when the youth was 17 years of age.~~

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court if unless the district court finds, by a preponderance of the evidence, that:

(a) a youth court proceeding and disposition will not serve the interests of community protection and;

(b) that the nature of the offense does not warrant prosecution in district court; and

(c) it would be in the best interests of the youth, and that, considering the seriousness of the offense, the case should remain in the district court if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

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

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or

a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) ~~A youth whose~~ If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may not be detained or otherwise placed in a jail or other adult detention facility ~~before~~ pending final disposition of the youth's case ~~unless:~~

- ~~(a) alternative facilities do not provide adequate security; and~~
- ~~(b) if the youth is kept in an area that provides physical separation as well as sight and sound separation from adults accused or convicted of criminal offenses."~~

**Section 9.** 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.** If a youth is found to be a youth in need of intervention or to have violated a consent adjustment, the youth court may enter its judgment making one or more of the following dispositions but may not order a state or local government entity to pay for care, treatment, intervention, placement, or evaluation:

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

(2) 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. ~~The judge may not place the youth in a residence unless the department informs the judge that resources are available for placement of the youth at that residence.~~

(3) commit the youth to ~~the department~~ youth court probation for the purposes of funding a private, out-of-home, residential placement subject to the conditions in 41-5-1522. In an order committing a youth to ~~the department~~ youth court probation, 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. The court shall require a case plan to provide for transition from the out-of-home residential placement back into the community.

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

(5) require the performance of community service;

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

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

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

(9) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community ~~and that does not obligate funding from the department for services outside the state of Montana without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (3) of this section, place a youth in a residential treatment facility;~~

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

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

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

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

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

(15) defer imposition of sentence for up to 45 days for a placement evaluation at a suitable program or facility with the following conditions:

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

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

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

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

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

**Section 10.** Section 41-5-1513, MCA, is amended to read:

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

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

(b) subject to 41-5-1504, 41-5-1512(15)(a), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The court may not place a youth adjudicated delinquent in a state youth correctional facility for an offense that would be a misdemeanor if committed by an adult ~~unless the court finds that the youth presents a danger to the public safety and that the placement is recommended by a mental health professional after evaluation of the youth. A youth who violates the conditions of probation may not be committed to a state youth correctional facility unless the probation resulted from an adjudication for an offense that would be a felony if committed by an adult~~ UNLESS THE COURT FINDS THAT THE YOUTH PRESENTS A DANGER TO THE PUBLIC SAFETY AND THAT THE PLACEMENT IS RECOMMENDED BY A MENTAL HEALTH PROFESSIONAL AFTER EVALUATION OF THE YOUTH.

(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 state or local government entity to pay for care, treatment, intervention, placement, or evaluation."

**Section 11.** Section 52-5-109, MCA, is amended to read:

**"52-5-109. Commitment expenses -- arrangement for transportation.** The expenses of committing a youth to ~~the Pine Hills~~ a state youth correctional facility or the department of corrections and the expenses of transporting the youth to ~~the Pine Hills~~ a state youth correctional facility or ~~the place designated by the department~~ for it to receive custody a private, out-of-home residential placement, either in the state of Montana or in another state, as well as the expense of returning the youth to the county of ~~residence~~ commitment, must be borne by the ~~county of residence~~ department YOUTH COURT and paid for out of the account established under ~~[section 16]~~ [SECTION 15]. The ~~district judge~~ youth court probation office shall arrange for transportation of the youth to and from the place where the ~~department has directed that it will receive custody of the youth~~ youth court has ordered that the youth be placed."

**Section 12.** Section 52-5-129, MCA, is amended to read:

**"52-5-129. Hearing on alleged violation of parole agreement -- right to appeal outcome.** (1) When it is alleged by a juvenile parole officer that a youth has violated the terms of the youth's parole agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier.



At the discretion of the hearings officer, this hearing may be held by means of interactive video transmission. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that the youth should be returned to the youth correctional facility from which the youth was released or whether a different plan for custody and supervision of the youth should be pursued by the department of corrections.

(2) The youth, upon advice of an attorney, may waive the right to a hearing.

(3) With regard to this hearing, the youth must be given:

(a) written notice of the alleged violation of the parole agreement, including notice of the purpose of the hearing;

(b) a disclosure of the evidence against the youth and the facts constituting the alleged violation;

(c) the opportunity to be heard in person or by interactive video transmission and to present witnesses and documentary evidence to controvert the evidence against the youth and to show that there are compelling reasons that justify or mitigate the violation;

(d) the opportunity to have the hearings officer subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses in person or by means of interactive video transmission;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the hearings officer.

(4) The department shall provide a hearings officer to conduct the hearing. The department shall adopt rules necessary to effect a prompt and full review.

(5) If the hearings officer finds, by a preponderance of the evidence, that the youth did in fact commit the violation, the hearings officer shall make a recommendation to the department for the placement of the youth. In making this recommendation, the hearings officer may consider mitigating or aggravating circumstances. The youth or the youth's attorney may appeal the hearings officer's decision to the department director. The appeal must be made in writing within 5 days of the hearing. The department director or designee shall grant or deny the appeal within 5 days of receipt of the appeal.

(6) The youth may appeal the decision of the department director to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department director's decision. The youth may obtain a written transcript of the hearing from the department by giving written

notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department may not be altered except for abuse of discretion or manifest injustice.

(7) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when the youth's detention or care is required to protect the person or property of the youth or of others or the youth may abscond or be removed from the community. The department shall determine the place and manner of detention pursuant to 41-5-348 and is responsible for the cost of the detention. Procedures for taking into custody and detention of a youth charged with violation of the youth's parole agreement are as provided in 41-5-321.

(8) If the decision is made to return the youth to the youth correctional facility from which the youth was released and the youth appeals that decision, the youth shall await the outcome of the appeal at the facility.

(9) If a youth is placed in an alternative placement due to overcrowding at a state youth correctional facility, the state youth correctional facility from which the youth was diverted must be considered the state youth correctional facility from which the youth was released."

NEW SECTION. Section 13. Short title. ~~[Sections 14 through 19]~~ [SECTIONS 13 THROUGH 18] may be cited as the "Juvenile Delinquency Intervention Act".

NEW SECTION. Section 14. Purpose. The purposes of ~~[sections 14 through 19]~~ [SECTIONS 13 THROUGH 18] are to:

- (1) provide an alternate method of funding juvenile placement and services;
- (2) increase the ability of local government to respond to juvenile delinquency through early intervention and expanded community alternatives; and
- (3) enhance the ability of local government to control costs.

NEW SECTION. Section 15. Establishment of program -- department duties. (1) ~~(a)~~ There is a juvenile delinquency intervention program.

~~— (b) There is an account in the state special revenue fund. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department to be used to administer [sections 14 through 19].~~

- (2) The department shall create ~~a subaccount~~ AN ACCOUNT for each youth court and use data gathered

during the administration of the program to determine the amount of funding to be placed in each ~~subaccount~~ ACCOUNT. The ~~subaccounts~~ ACCOUNTS must be used by the youth courts for funding in-state and out-of-state placement and services.

~~— (3) The department shall withhold a portion of the funds allocated to each subaccount to provide a cost containment fund for judicial districts that experience youth crime rates that exceed the youth crime rates projected by the department.~~

~~(4)(3)~~ The department and the youth court shall monitor the youth court's ~~subaccount~~ ACCOUNT to ensure that the youth court does not exceed its allocated ~~subaccount~~ ACCOUNT budget.

~~(5)(4)~~ Subaccount ACCOUNT funds not used by the youth court for placements must be distributed to that youth court in accordance with rules adopted by the department to be used for placement alternatives and early intervention alternatives.

~~(6)(5)~~ The department shall provide technical assistance to each youth court for the monitoring of ~~subaccount~~ ACCOUNT funds and the evaluation and development of placement alternatives and effective intervention programming.

~~(7)(6)~~ The department shall review and monitor each youth court to enable the development of placement alternatives by the youth courts and the development of early intervention alternatives by the youth courts. The department shall report to the legislature on the results of its monitoring.

~~— (8) The department shall collect data and coordinate with the board of crime control to study and develop a plan to mitigate overrepresentation of minority youth in the youth court system.~~

**NEW SECTION. Section 16. Youth court duties.** (1) Each youth court shall:

(a) use available resources to develop alternatives for the placement of youth;

(b) use available resources for early intervention strategies for troubled youth;

(c) use a risk assessment instrument approved by the department for the measurement of risk assessment and effectiveness of treatment or intervention for youth adjudicated pursuant to 41-5-1512 or 41-5-1513;

(d) submit quarterly reports to the department documenting the use of diversionary and prevention programs and the use of placement services;

(e) participate in the cost containment review panel established under ~~[section 18]~~ [SECTION 17]; and

(f) provide the department and the legislative auditor with access to all records maintained by the youth court.

(2) A youth court may not order a local government or a state governmental entity to pay the costs of placement of a youth under ~~[sections 14 through 19]~~ [SECTIONS 13 THROUGH 18] if the local government or state governmental entity informs the youth court that its current budget does not contain funds that will pay for the placement.

**NEW SECTION. Section 17. Cost containment review panel.** (1) The department shall establish a cost containment review panel ~~to administer the cost containment fund reserved by the department pursuant to [section 16].~~

(2) The cost containment review panel shall consist of the following members appointed by the department:

- (a) two members from the department of corrections;
- (b) a member from the department of public health and human services;
- (c) a representative from the field of mental health;
- (d) a youth court judge;
- (e) a chief juvenile probation officer; and
- (f) a county commissioner.

(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 ~~in the cost containment fund~~ APPROPRIATED FOR PURPOSES OF THIS SECTION.

(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 that exceeds its ~~subaccount~~ ACCOUNT allocation under ~~[section 16]~~ [SECTION 15] may request funds from the cost containment ~~fund~~ REVIEW PANEL. If a panel member referred to in subsections (2)(d) through (2)(f) 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 for purposes of the decision.

**NEW SECTION. Section 18. Rulemaking authority.** (1) The department shall adopt rules necessary for the implementation of ~~[sections 14 through 19]~~ [SECTIONS 13 THROUGH 18], including but not limited to:

- (a) defining and establishing criteria for early intervention regarding troubled youth and the development

of community alternatives;

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

(c) distributing unused ~~subaccount~~ ACCOUNT funds to the youth courts;

(d) determining the allocation of funds to the ~~subaccounts~~ ACCOUNTS for the youth courts;

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

(f) monitoring and auditing each youth court to ensure that ~~subaccount~~ ACCOUNT funds are being used as required by law;

(g) distributing cost containment funds to youth courts;

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

(i) developing procedures for the operation of the cost containment review panel;

(j) developing of one or more risk assessment tools; AND

~~(k) developing procedures for mitigating overrepresentation of minority youth in the youth court system;~~  
and

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

(2) It is the intent of the legislature that rules adopted by the department encourage the use of local, regional, and state resources for the placement of troubled youth.

**NEW SECTION. Section 19. Allocation of first-year funding.** The department of corrections shall use data gathered during the administration of the intervention in delinquency pilot program established under section 73, Chapter 550, Laws of 1997, to assist in determining the allocations to the ~~subaccounts~~ ACCOUNTS created under ~~[section 16]~~ [SECTION 15] during the first year of operation of the juvenile delinquency intervention program established by ~~[section 16]~~ [SECTION 15].

**NEW SECTION. SECTION 20. COST CONTAINMENT FUND -- ALLOCATION OF APPROPRIATED FUNDS -- USE OF FUNDS.** THE DEPARTMENT OF CORRECTIONS SHALL ESTABLISH A COST CONTAINMENT FUND FOR THE PURPOSES OF [SECTION 17] AND SHALL ALLOCATE TO THE FUND \$600,000 EACH FISCAL YEAR FROM THE FUNDS APPROPRIATED FOR THE JUVENILE PLACEMENT BUDGET FOR THE FISCAL BIENNIUM BEGINNING JULY 1, 2001, TO BE USED FOR THE PURPOSES OF [SECTION 17].

~~NEW SECTION. **Section 21. Fund transfer.** There is transferred each year \$800,000 from the general fund to the special revenue fund account established in [section 16].~~

~~NEW SECTION. **SECTION 20. STATUTORY APPROPRIATION.** THERE IS STATUTORILY APPROPRIATED, AS PROVIDED IN 17-7-502, \$800,000 FROM THE GENERAL FUND IN EACH FISCAL YEAR TO THE DEPARTMENT OF CORRECTIONS TO BE USED TO ADMINISTER THE COST CONTAINMENT PROGRAM ESTABLISHED IN [SECTION 18].~~

NEW SECTION. **SECTION 21. PROGRAM PROGRESS AND REPORT.** THE DEPARTMENT OF CORRECTIONS SHALL DEVELOP A SYSTEM OF OUTCOME MEASURES DURING THE FIRST 6 MONTHS OF THE OPERATION OF THE PROGRAM ESTABLISHED IN [SECTION 16] [SECTION 15], USE THE SYSTEM TO EVALUATE THE PROGRESS OF THE PROGRAM, AND REPORT TO THE LEGISLATURE IN THE MANNER PROVIDED IN 5-11-210.

NEW SECTION. **Section 22. Codification instruction.** [Sections 14 through 19] [SECTIONS 13 THROUGH 18] are intended to be codified as an integral part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to [sections 14 through 19] [SECTIONS 13 THROUGH 18].

NEW SECTION. **Section 23. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 24. Effective date.** [This act] is effective July 1, 2001.

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