

HOUSE BILL NO. 438

INTRODUCED BY K. HOLMLUND

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3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT TO REPURPOSE CERTAIN
5 CORRECTIONAL FACILITIES SERVING YOUTH AND ADULT OFFENDERS; REDEFINING TERMS RELATED
6 TO STATE YOUTH CORRECTIONAL FACILITIES AND STATE PRISONS; ALLOWING THE DEPARTMENT
7 OF CORRECTIONS TO HOLD CERTAIN YOUTH AND ADULT OFFENDERS IN THE SAME FACILITY
8 SUBJECT TO CERTAIN CONDITIONS; REVISING LAWS RELATED TO EXCESSIVE CAPACITY FOR
9 CERTAIN CORRECTIONAL FACILITIES THAT HOUSE YOUTH AND THE DEPARTMENT'S DETERMINATION
10 OF ALTERNATIVE PLACEMENTS; REQUIRING THE DEPARTMENT TO PRIORITIZE YOUTH NEEDS WHEN
11 CONSIDERING THE CURRENT USE OF A FACILITY PREVIOUSLY USED TO HOUSE YOUTH; ELIMINATING
12 A PROHIBITION ON THE DEPARTMENT ABANDONING, MOVING, OR DISCONTINUING A CORRECTIONAL
13 FACILITY OR STATE INSTITUTION; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS
14 19-20-101, 20-4-134, 20-4-502, 20-9-327, 41-5-103, 41-5-106, 41-5-121, 41-5-122, 41-5-206, 41-5-355,
15 41-5-1304, 41-5-1416, 41-5-1503, 41-5-1504, 41-5-1513, 41-5-1522, 41-5-1523, 41-5-2002, 41-5-2005, 45-5-214,
16 45-7-307, 45-8-318, 46-23-201, 52-2-302, 52-5-101, 52-5-108, 52-5-109, 52-5-110, 52-5-111, 52-5-113,
17 52-5-114, 52-5-121, 52-5-126, 52-5-128, 52-5-129, 53-1-107, 53-1-109, 53-1-201, 53-1-202, 53-1-203, 53-1-207,
18 53-30-101, 53-30-102, AND 53-30-141, MCA."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21
22 **Section 1.** Section 19-20-101, MCA, is amended to read:
23 **"19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the
24 following definitions apply:
25 (1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of
26 a member or paid by a member and credited to the member's individual account in the annuity savings account,
27 together with interest. Regular interest must be computed and allowed to provide a benefit at the time of
28 retirement.
29 (2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality
30 table and interest rate assumption set by the retirement board.

1 (3) "Average final compensation" means a member's highest average earned compensation, determined
2 pursuant to 19-20-805, on which all required contributions have been made.

3 (4) "Beneficiary" means one or more persons formally designated by a member or retiree to receive a
4 retirement allowance or payment upon the death of the member or retiree, except for a joint annuitant.

5 (5) "Benefit recipient" means a retired member, a joint annuitant, or a beneficiary who is receiving a
6 retirement allowance.

7 (6) "Creditable service" is that service defined by 19-20-401.

8 (7) "Date of termination" or "termination date" means the last date on which a member performed service
9 in a position reportable to the retirement system.

10 (8) (a) "Earned compensation" means, except as limited by subsections (8)(b) and (8)(c) or by
11 19-20-715, remuneration paid for the service of a member out of funds controlled by an employer before any
12 pretax deductions allowed under the Internal Revenue Code are deducted.

13 (b) Earned compensation does not include:

14 (i) direct employer premium payments on behalf of members for medical, pharmaceutical, disability, life,
15 vision, dental, or any other insurance;

16 (ii) any direct employer payment or reimbursement for:

17 (A) professional membership dues;

18 (B) maintenance;

19 (C) housing;

20 (D) day care;

21 (E) automobile, travel, lodging, or entertaining expenses; or

22 (F) any similar form of maintenance, allowance, or expenses;

23 (iii) the imputed value of health, life, or disability insurance or any other fringe benefits;

24 (iv) any noncash benefit provided by an employer to or on behalf of a member;

25 (v) termination pay unless included pursuant to 19-20-716;

26 (vi) compensation paid to a member from a plan for the deferral of compensation under section 457(f)
27 of the Internal Revenue Code, 26 U.S.C. 457(f);

28 (vii) payment for sick, annual, or other types of leave paid to a member prior to termination from
29 employment or accrued in excess of that normally allowed;

30 (viii) incentive or bonus payments paid to a member that are not part of a series of annual payments; or

- 1 (ix) any similar payment or reimbursement made to or on behalf of a member by an employer.
- 2 (c) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same
3 or a similar amount as a pretax deduction is considered a fringe benefit and not earned compensation.
- 4 (9) "Employer" means:
- 5 (a) the state of Montana;
- 6 (b) a public school district, as provided in 20-6-101 and 20-6-701;
- 7 (c) the office of public instruction;
- 8 (d) the board of public education;
- 9 (e) an education cooperative;
- 10 (f) the Montana school for the deaf and blind, as described in 20-8-101;
- 11 (g) the Montana youth challenge program, as defined in 10-1-101;
- 12 (h) a ~~state youth~~ correctional facility, as defined in 41-5-103;
- 13 (i) the Montana university system;
- 14 (j) a community college; or
- 15 (k) any other agency, political subdivision, or instrumentality of the state that employs a person who is
16 designated a member of the retirement system pursuant to 19-20-302.
- 17 (10) "Full-time service" means service that is:
- 18 (a) at least 180 days in a fiscal year;
- 19 (b) at least 140 hours a month during at least 9 months in a fiscal year; or
- 20 (c) at least 1,080 hours in a fiscal year under an alternative school calendar adopted by a school board
21 and reported to the office of public instruction as required by 20-1-302. The standard for full-time service for a
22 school district operating under an alternative school calendar must be applied uniformly to all employees of the
23 school district required to be reported to the retirement system.
- 24 (11) "Internal Revenue Code" has the meaning provided in 15-30-2101.
- 25 (12) "Joint annuitant" means the one person that a retired member who has elected an optional allowance
26 under 19-20-702 has designated to receive a retirement allowance upon the death of the retired member.
- 27 (13) "Member" means a person who has an individual account in the annuity savings account. Unless
28 otherwise specified, "member" refers to a tier one member or a tier two member. An active member is a person
29 included under the provisions of 19-20-302. An inactive member is a person included under the provisions of
30 19-20-303.

1 (14) "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the
2 lifetime of the retired member.

3 (15) "Normal retirement age" means an age no earlier than 60 years of age.

4 (16) "Part-time service" means service that is not full-time service. Part-time service must be credited in
5 the proportion that the actual time worked compares to full-time service.

6 (17) "Position reportable to the retirement system" means a position in which an individual performs
7 duties that would entitle the person to active membership in the retirement system under the provisions of
8 19-20-302.

9 (18) "Regular interest" means interest at a rate set by the retirement board in accordance with
10 19-20-501(2).

11 (19) "Retired", "retired member", or "retiree" means a person who is considered in retired member status
12 under the provisions of 19-20-810.

13 (20) "Retirement allowance" or "retirement benefit" means a monthly payment due to a retired member
14 who has qualified for service or disability retirement or due to a joint annuitant or beneficiary.

15 (21) "Retirement board" or "board" means the retirement system's governing board provided for in
16 2-15-1010.

17 (22) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of
18 Montana provided for in 19-20-102.

19 (23) "Service" means the performance of duties that would entitle the person to active membership in the
20 retirement system under the provisions of 19-20-302.

21 (24) "Termination" or "terminate" means that the employment relationship between the member and the
22 member's employer has been terminated as required in 19-20-810.

23 (25) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay,
24 amounts provided under a window or early retirement incentive plan, or other payments contingent on the
25 employee terminating employment.

26 (b) Termination pay does not include:

27 (i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without
28 regard to the wage base limitation; and

29 (ii) amounts that are payable to a member from a plan for the deferral of compensation under section
30 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

1 (26) "Tier one member" means a person who became a member before July 1, 2013, and who has not
2 withdrawn the member's account balance.

3 (27) "Tier two member" means a person who became a member on or after July 1, 2013, or who, after
4 withdrawing the member's account balance, became a member again after July 1, 2013.

5 (28) "Vested" means that a member has been credited with at least 5 full years of membership service
6 upon which contributions have been made and has a right to a future retirement benefit.

7 (29) "Written application" or "written election" means a written instrument, required by statute or the rules
8 of the board, properly signed and filed with the board, that contains all the required information, including
9 documentation that the board considers necessary."
10

11 **Section 2.** Section 20-4-134, MCA, is amended to read:

12 **"20-4-134. Professional stipends for teachers certified by national board for professional teaching**
13 **standards.** (1) Pursuant to subsection (4), a one-time stipend of \$3,000 must be provided to each teacher who
14 obtains certification from the national board for professional teaching standards if the teacher is:

15 (a) a full-time classroom teacher, librarian, or other full-time employee serving in an assignment covered
16 by national board certification assessment;

17 (b) certified to teach in Montana under the provisions of 20-4-103; and

18 (c) a full-time employee of:

19 (i) a Montana public school district, as defined in 20-6-101;

20 (ii) an education cooperative, as described in 20-7-451;

21 (iii) the Montana school for the deaf and blind, as described in 20-8-101; or

22 (iv) a ~~state youth~~ correctional facility, as defined in 41-5-103.

23 (2) A teacher is eligible for the stipend in the school year beginning July 1 after the teacher obtains
24 certification from the national board for professional teaching standards.

25 (3) By March 1, the superintendent of public instruction shall distribute stipend payments to each eligible
26 teacher.

27 (4) The obligation for funding the professional stipend is an obligation of the state. This section may not
28 be construed to require a school district to provide a stipend to a qualifying teacher without a payment from the
29 state to the district. If the funding for professional stipends is less than the total amount for which Montana
30 teachers qualify, the superintendent of public instruction shall prorate the funding to the districts in a manner that

1 provides the same amount of stipend to each qualifying teacher."

2

3 **Section 3.** Section 20-4-502, MCA, is amended to read:

4 **"20-4-502. Definitions.** For purposes of this part, unless the context requires otherwise, the following
5 definitions apply:

6 (1) "Education cooperative" means a cooperative of Montana public schools as described in 20-7-451.

7 (2) "Educational loans" means all loans made pursuant to a federal loan program, except federal parent
8 loans for undergraduate students (PLUS) loans, as provided in 20 U.S.C. 1078-2.

9 (3) "Federal loan program" means educational loans authorized by 20 U.S.C. 1071, et seq., 20 U.S.C.
10 1087a, et seq., and 20 U.S.C. 1087aa, et seq.

11 (4) (a) "Quality educator" means a full-time equivalent educator, as reported to the superintendent of
12 public instruction for accreditation purposes in the current school year, who:

13 (i) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in
14 subsection (4)(b) in a position that requires an educator license in accordance with administrative rules adopted
15 by the board of public education; or

16 (ii) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-17-302, 37-22-301,
17 37-23-201, 37-24-301, or 37-25-302 and is employed by an entity listed in subsection (4)(b) of this section to
18 provide services to students.

19 (b) For purposes of subsection (4)(a), an entity means:

20 (i) a school district;

21 (ii) an education cooperative;

22 (iii) the Montana school for the deaf and blind, as described in 20-8-101;

23 (iv) the Montana youth challenge program; and

24 (v) a ~~state youth~~ correctional facility, as defined in 41-5-103.

25 (5) "School district" means a public school district, as provided in 20-6-101 and 20-6-701."

26

27 **Section 4.** Section 20-9-327, MCA, is amended to read:

28 **"20-9-327. Quality educator payment.** (1) (a) The state shall provide a quality educator payment to:

29 (i) public school districts, as defined in 20-6-101 and 20-6-701;

30 (ii) special education cooperatives, as described in 20-7-451;

- 1 (iii) the Montana school for the deaf and blind, as described in 20-8-101;
- 2 (iv) ~~state youth~~ correctional facilities, as defined in 41-5-103; and
- 3 (v) the Montana youth challenge program.
- 4 (b) A special education cooperative that has not met the requirements of 20-7-454 may not be funded
- 5 under the provisions of this section except by approval of the superintendent of public instruction.
- 6 (2) (a) The quality educator payment for special education cooperatives must be distributed directly to
- 7 those entities by the superintendent of public instruction.
- 8 (b) The quality educator payment for the Montana school for the deaf and blind must be distributed to
- 9 the Montana school for the deaf and blind.
- 10 (c) The quality educator payment for Pine Hills and Riverside youth correctional facilities must be
- 11 distributed to those facilities by the department of corrections.
- 12 (d) The quality educator payment for the Montana youth challenge program must be distributed to that
- 13 program by the department of military affairs.
- 14 (3) The quality educator payment is calculated as provided in 20-9-306, using the number of full-time
- 15 equivalent educators, as reported to the superintendent of public instruction for accreditation purposes in the
- 16 previous school year, each of whom:
- 17 (a) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in
- 18 subsection (1) of this section in a position that requires an educator license in accordance with the administrative
- 19 rules adopted by the board of public education;
- 20 (b) (i) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-17-302, 37-22-301,
- 21 37-23-201, 37-24-301, or 37-25-302; and
- 22 (ii) is employed by an entity listed in subsection (1) to provide services to students; or
- 23 (c) (i) holds an American Indian language and culture specialist license; and
- 24 (ii) is employed by an entity listed in subsection (1) to provide services to students in an Indian language
- 25 immersion program pursuant to Title 20, chapter 7, part 14. (Subsection (3)(c) terminates June 30, 2019--sec.
- 26 10, Ch. 442, L. 2015.)"
- 27

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

29 **"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise,

30 the following definitions apply:

- 1 (1) "Adult" means an individual who is 18 years of age or older.
- 2 (2) "Agency" means any entity of state or local government authorized by law to be responsible for the
3 care or rehabilitation of youth.
- 4 (3) "Assessment officer" means a person who is authorized by the court to provide initial intake and
5 evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.
- 6 (4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.
- 7 (5) (a) "Correctional facility" means a public secure residential facility or a private secure residential
8 facility, ~~physically secure residential facility~~ under contract with the department and operated ~~solely for the~~
9 ~~purpose of housing adjudicated delinquent youth~~ to provide for the custody, treatment, training, and rehabilitation
10 of:
- 11 (i) formally adjudicated delinquent youth;
- 12 (ii) convicted adult offenders or criminally convicted youth; or
- 13 (iii) a combination of the populations described in subsections (5)(a)(i) and (5)(a)(ii) under conditions set
14 by the department in rule.
- 15 (b) The term does not include a state prison as defined in 53-30-101.
- 16 (6) "Cost containment pool" means an account from which funds are allocated by the office of court
17 administrator under 41-5-132 to a judicial district that exceeds its annual allocation for juvenile out-of-home
18 placements, programs, and services or to the department for costs incurred under 41-5-1504.
- 19 (7) "Cost containment review panel" means the panel established in 41-5-131.
- 20 (8) "Court", when used without further qualification, means the youth court of the district court.
- 21 (9) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to
22 41-5-206.
- 23 (10) (a) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth
24 has been given.
- 25 (b) The term does not include a person who has only physical custody.
- 26 (11) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana
27 Youth Court Act as a youth:
- 28 (a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or
- 29 (b) who has been placed on probation as a delinquent youth and who has violated any condition of
30 probation.

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

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

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

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

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

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

13 (c) violation of a youth parole agreement.

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

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

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

20 (18) "Final disposition" means the implementation of a court order for the disposition or placement of a
21 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.

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

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

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

29 (21) "Guardian" means an adult:

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

1 youth; and

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

3 (22) "Habitual truancy" means recorded unexcused absences of 9 or more days or 54 or more parts of
4 a day, whichever is less, in 1 school year.

5 (23) (a) "Holdover" means a room, office, building, or other place approved by the board of crime control
6 for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed
7 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention
8 or shelter care facility.

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

10 (24) (a) "Informal youth court records" means information or data, either in written or electronic form,
11 maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and
12 includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and
13 supervision records of probationers.

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

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

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

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

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

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

27 (i) have physical custody of the youth;

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

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

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

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

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

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

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

7 (32) (a) "Parent" means the natural or adoptive parent.

8 (b) The term does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

5 ~~(42) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or the~~
6 ~~Riverside youth correctional facility in Boulder.~~

7 ~~(43)~~(42) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing
8 food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from
9 or are without the care and supervision of their parents or guardians.

10 ~~(44)~~(43) "Victim" means:

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

13 (b) an adult relative of the victim, as defined in subsection ~~(44)(a)~~ (43)(a), if the victim is a minor; and

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

15 ~~(45)~~(44) "Youth" means an individual who is less than 18 years of age without regard to sex or
16 emancipation.

17 ~~(46)~~(45) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1203.

18 ~~(47)~~(46) "Youth assessment center" means a staff-secured location that is licensed by the department
19 of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate
20 and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing
21 the youth's behavior.

22 ~~(48)~~(47) "Youth care facility" has the meaning provided in 52-2-602.

23 ~~(49)~~(48) "Youth court" means the court established pursuant to this chapter to hear all proceedings in
24 which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court
25 judge, juvenile probation officers, and assessment officers.

26 ~~(50)~~(49) "Youth detention facility" means a secure detention facility licensed by the department for the
27 temporary substitute care of youth that is:

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

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

30 (b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction

1 for contempt of court, violation of a parole agreement, or violation of a valid court order.

2 ~~(54)~~(50) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

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

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

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

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

12

13 **Section 6.** Section 41-5-106, MCA, is amended to read:

14 "**41-5-106. Order of adjudication -- noncriminal.** ~~No~~ A placement of any youth in any ~~state~~ youth
15 correctional facility under this chapter ~~shall~~ may not be deemed commitment to a penal institution. ~~No~~ An
16 adjudication ~~upon~~ on the status of any youth in the jurisdiction of the court ~~shall~~ may not operate to impose any
17 of the civil disability imposed on a person by reason of conviction of a criminal offense; ~~nor shall such~~ An
18 adjudication may not be deemed a criminal conviction, ~~nor shall any~~ and a youth may not be charged with or
19 convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under
20 this chapter nor evidence given in youth court proceedings under this chapter ~~shall be~~ is admissible in evidence
21 except as otherwise provided in this chapter."

22

23 **Section 7.** Section 41-5-121, MCA, is amended to read:

24 "**41-5-121. Youth placement committees -- composition.** (1) In each judicial district, the youth court
25 and the department shall establish a youth placement committee for the purposes of:

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

28 (b) recommending available community services or alternative placements whenever a change is
29 required in the placement of a youth who is currently in the legal custody of the youth court under 41-5-1512 or
30 41-5-1513 or the department under 41-5-1513. However, the committee may not substitute its judgment for that

1 of the superintendent of a ~~state youth~~ correctional facility regarding the discharge of a youth from the facility or
2 the placement of a youth on parole under the department's jurisdiction.

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

6 (b) The committee must include:

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

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

9 (iii) the chief juvenile probation officer or the chief juvenile probation officer's designee. The officer or the
10 officer's designee is the presiding officer of the committee.

11 (iv) a mental health professional; and

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

14 (c) The committee may include:

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

17 (ii) the youth's parent or guardian;

18 (iii) a youth services provider; and

19 (iv) the youth's juvenile probation officer.

20 (3) The youth court judge shall appoint all members of the youth placement committee except the
21 juvenile parole officer. The director of the department shall appoint the juvenile parole officer and shall, when
22 making the appointment, take into consideration:

23 (a) the juvenile parole officer's qualifications;

24 (b) the costs involved in the juvenile parole officer's attendance at youth placement committee meetings;

25 and

26 (c) the location of the juvenile parole officer's home in relation to the location of the youth placement
27 committee.

28 (4) Committee members serve without compensation.

29 (5) The committee may be convened by request of the department to the presiding officer or by the chief
30 juvenile probation officer.

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

4 (7) The office of court administrator may not charge expenditures to the judicial district allocations
 5 established pursuant to 41-5-130 unless the youth court has established a youth placement committee as
 6 provided in this section."

7

8 **Section 8.** Section 41-5-122, MCA, is amended to read:

9 **"41-5-122. Duties of youth placement committee.** A youth placement committee shall:

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

21

22 **Section 9.** Section 41-5-206, MCA, is amended to read:

23 **"41-5-206. Filing in district court prior to formal proceedings in youth court.** (1) The county attorney
 24 may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the
 25 district court a motion for leave to file an information in the district court if:

- 26 (a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and
 27 the unlawful act would if it had been committed by an adult constitute:
 28 (i) sexual intercourse without consent as defined in 45-5-503;
 29 (ii) deliberate homicide as defined in 45-5-102;
 30 (iii) mitigated deliberate homicide as defined in 45-5-103;

- 1 (iv) assault on a peace officer or judicial officer as defined in 45-5-210; or
2 (v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate
3 or mitigated deliberate homicide; or
4 (b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and
5 the unlawful act is one or more of the following:
6 (i) negligent homicide as defined in 45-5-104;
7 (ii) arson as defined in 45-6-103;
8 (iii) aggravated assault as defined in 45-5-202;
9 (iv) sexual assault as provided in 45-5-502(3);
10 (v) assault with a weapon as defined in 45-5-213;
11 (vi) robbery as defined in 45-5-401;
12 (vii) burglary or aggravated burglary as defined in 45-6-204;
13 (viii) aggravated kidnapping as defined in 45-5-303;
14 (ix) possession of explosives as defined in 45-8-335;
15 (x) criminal distribution of dangerous drugs as defined in 45-9-101;
16 (xi) criminal possession of dangerous drugs as defined in 45-9-102(4) through (6);
17 (xii) criminal possession with intent to distribute as defined in 45-9-103(1);
18 (xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
19 (xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street
20 gang membership as defined in 45-8-403;
21 (xv) escape as defined in 45-7-306;
22 (xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts
23 enumerated in subsections (1)(b)(i) through (1)(b)(xv).

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

26 (3) The district court shall grant leave to file the information if it appears from the affidavit or other
27 evidence supplied by the county attorney that there is probable cause to believe that the youth has committed
28 the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct
29 a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is
30 waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on

1 request of either party for good cause. The district court may not transfer the case back to the youth court unless
2 the district court finds, by a preponderance of the evidence, that:

3 (a) a youth court proceeding and disposition will serve the interests of community protection;

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

5 (c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

6 (4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth
7 with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a
8 criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district
9 court as provided in this section. A case may be transferred to district court after prosecution as provided in
10 41-5-208 or 41-5-1605.

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

13 (a) tried in youth court;

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

16 (6) If a youth is found guilty in district court of an offense enumerated in subsection (1) and any offense
17 that arose during the commission of a crime enumerated in subsection (1), the court shall sentence the youth
18 pursuant to 41-5-2503 and Titles 45 and 46. If a youth is acquitted in district court of all offenses enumerated in
19 subsection (1), the district court shall sentence the youth pursuant to Title 41 for any remaining offense for which
20 the youth is found guilty. A youth who is sentenced to the department or a state prison must be evaluated and
21 placed by the department in an appropriate ~~juvenile or adult~~ correctional facility. The department shall confine
22 the youth in an institution that it considers proper, including a ~~state youth~~ correctional facility under the procedures
23 of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the
24 period of confinement, school-aged youth with disabilities must be provided an education consistent with the
25 requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

26 (7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing,
27 the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's
28 case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal
29 offenses."

30

1 **Section 10.** Section 41-5-355, MCA, is amended to read:

2 "~~41-5-355. Excessive juvenile population -- confinement~~ **Confinement of juveniles in alternate**
3 **placements.** (1) The department shall determine the capacity for state youth of correctional facilities. The
4 department shall notify all district courts, sheriffs, and youth courts of the capacity for each state youth
5 correctional facility by sending a report to each annually.

6 ~~————(2) If the population of a state youth correctional facility exceeds the capacity established by the~~
7 ~~department, the director of the department may declare that the capacity has been exceeded and temporarily stop~~
8 ~~admissions to the facility. The director shall notify each district court, sheriff, and youth court that delinquent or~~
9 ~~criminally convicted youth will not be accepted by the department for admission into the facility until the population~~
10 ~~is reduced to less than the capacity determined by the department in subsection (1).~~

11 ~~(3)(2) If the director of the~~ The department declares that the capacity has been exceeded, the
12 ~~department shall~~ may place delinquent youth committed to a ~~state youth~~ correctional facility or criminally
13 convicted youth in ~~alternate placements~~ based on the needs of the delinquent youth or criminally convicted youth
14 and the resource allocation decisions of the department. ~~If a youth is denied placement in a state youth~~
15 ~~correctional facility under this section, the department shall inform and seek approval of the district court of the~~
16 ~~intended alternative placement prior to placing the youth.~~

17 ~~(4)(3) The department may enter into contracts with the federal government, other states, local~~
18 ~~governments, public or private corporations, and other entities that have suitable facilities for confining delinquent~~
19 ~~youth or criminally convicted youth committed to the department, either because a state youth correctional facility~~
20 ~~has exceeded its capacity or because the department has no youth correctional facility that is adequate for certain~~
21 ~~delinquent youth or criminally convicted youth."~~

22

23 **Section 11.** Section 41-5-1304, MCA, is amended to read:

24 "**41-5-1304. Disposition permitted under consent adjustment.** (1) The following dispositions may be
25 imposed by consent adjustment:

26 (a) probation;

27 (b) placement of the youth in substitute care in a youth care facility, as defined in 52-2-602 and pursuant
28 to a recommendation made under 41-5-121;

29 (c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth
30 pursuant to a recommendation made under 41-5-121;

- 1 (d) restitution, as provided in 41-5-1521, upon approval of the youth court judge;
- 2 (e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10;
- 3 (f) confiscation of the youth's driver's license, if the youth has one, by the juvenile probation officer for
- 4 a specified period of time, not to exceed 90 days. The juvenile probation officer shall notify the department of
- 5 justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's
- 6 driving record. The juvenile probation officer shall notify the department of justice when the confiscated driver's
- 7 license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more
- 8 than once. The juvenile probation officer may, in the juvenile probation officer's discretion and with the
- 9 concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the
- 10 time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in
- 11 determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a
- 12 vehicle or vehicles driven by the youth, nor may it be used as grounds for denying coverage for an accident or
- 13 other occurrence under an existing policy.
- 14 (g) a requirement that the youth receive counseling services;
- 15 (h) placement in a youth assessment center for up to 10 days;
- 16 (i) placement of the youth in detention for up to 3 days on a space-available basis at the county's
- 17 expense, which is not reimbursable under part 19 of this chapter;
- 18 (j) a requirement that the youth perform community service;
- 19 (k) a requirement that the youth participate in victim-offender mediation;
- 20 (l) an agreement that the youth pay a contribution covering all or a part of the costs for the adjudication,
- 21 disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care,
- 22 custody, and treatment of the youth, including the costs of counseling;
- 23 (m) an agreement that the youth pay a contribution covering all or a part of the costs of a victim's
- 24 counseling or restitution for damages that result from the offense for which the youth is disposed;
- 25 (n) any other condition ordered by the court to accomplish the goals of the consent adjustment, including
- 26 but not limited to mediation or youth assessment. Before ordering youth assessment, the court shall provide the
- 27 family with an estimate of the cost of youth assessment, and the court shall take into consideration the financial
- 28 resources of the family before ordering parental or guardian contribution for the costs of youth assessment.
- 29 (2) If the youth violates a parole agreement as provided for in 52-5-126, the youth must be returned to
- 30 the court for further disposition. A youth may not be placed in a ~~state youth~~ correctional facility under a consent

1 adjustment.

2 (3) If the youth is placed in substitute care, an assessment placement, or detention requiring payment
3 by any state department or local government agency, the court shall examine the financial ability of the youth's
4 parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition,
5 supervision, care, placement, and treatment of the youth, including the costs of necessary medical, dental, and
6 other health care."

7

8 **Section 12.** Section 41-5-1416, MCA, is amended to read:

9 **"41-5-1416. Victims and witnesses of juvenile felony offenses -- consultation -- notification of**
10 **proceedings.** (1) The attorney general shall ensure that the services and assistance that must be provided under
11 Title 46, chapter 24, to a victim or witness of a crime are also provided to the victim or witness of a juvenile felony
12 offense.

13 (2) In a proceeding filed under this part, the county attorney or a designee shall consult with the victim
14 of a juvenile felony offense regarding the disposition of the case, including:

15 (a) a dismissal of the petition filed under 41-5-1402;

16 (b) a reduction of the charge to misdemeanor;

17 (c) the release of the youth from detention or shelter care pending the adjudicatory hearing or pending
18 a probable cause hearing. The consultation required by this subsection (2)(c) must take place prior to the youth's
19 release, whether or not the county attorney or designee has received information from the victim under subsection
20 (3)(a), unless the county attorney or designee is unable to contact the victim after making a good faith effort to
21 contact the victim.

22 (d) the disposition of the youth.

23 (3) (a) Whenever possible, a person described in subsection (3)(b) who provides the appropriate agency
24 with a current address and telephone number must receive prompt advance notification of youth court case
25 proceedings, including:

26 (i) the filing of a petition under 41-5-1402;

27 (ii) the release of the youth from detention or shelter care; and

28 (iii) proceedings in the adjudication of the petition, including, when applicable, entry of a consent decree
29 under 41-5-1501, the setting of a date for the adjudicatory hearing under 41-5-1502, the setting of a date for the
30 dispositional hearing under 41-5-1511, the disposition made, and the release of the youth from a youth

1 correctional facility.

2 (b) A person entitled to notification under this subsection (3) must be a victim, as defined in 41-5-103,
3 of a juvenile felony offense.

4 (c) The county attorney or a designee who provides the consultation regarding the disposition of a case
5 required in subsection (2) shall give the victim the opportunity to provide the victim's current telephone number
6 and address and shall provide the victim with the name and address of the agency or agencies responsible for
7 operation of youth detention, correctional, or shelter care facilities that are responsible for the custody of the
8 youth.

9 (d) The appropriate official or agency shall provide the notification required by this subsection (3) in the
10 same manner as required for offenses committed by adults.

11 (4) For purposes of this section, "juvenile felony offense" means an offense committed by a juvenile that,
12 if committed by an adult, would constitute a felony offense. The term includes any offense for which a juvenile
13 may be declared a serious juvenile offender, as defined in 41-5-103."
14

15 **Section 13.** Section 41-5-1503, MCA, is amended to read:

16 **"41-5-1503. Medical or psychological evaluation of youth -- urinalysis.** (1) The youth court may order
17 a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives
18 the youth's constitutional rights in the manner provided for in 41-5-331. Except as provided in subsection (2), the
19 youth court shall pay for the cost of the evaluation from its judicial district's allocation provided for in 41-5-130 or
20 41-5-2012.

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

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

27 (4) An evaluation of a youth may not be performed at the Montana state hospital.

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

1

2 **Section 14.** Section 41-5-1504, MCA, is amended to read:

3 **"41-5-1504. Finding of suffering from mental disorder and meeting other criteria -- rights --**
4 **limitation on placement.** (1) A youth who is found to be suffering from a mental disorder, as defined in
5 53-21-102, and who meets the criteria in 53-21-126(1) is entitled to all rights provided by 53-21-114 through
6 53-21-119.

7 (2) A youth who, prior to placement or sentencing, is found to be suffering from a mental disorder, as
8 defined in 53-21-102, and who meets the criteria in 53-21-126(1) may not be committed or sentenced to a ~~state~~
9 ~~youth~~ correctional facility.

10 (3) (a) A youth who is found to be suffering from a mental disorder, as defined in 53-21-102, and who
11 meets the criteria in 53-21-126(1), after placement in or sentencing to a ~~state-youth~~ correctional facility must be
12 moved to a more appropriate placement in response to the youth's mental health needs and consistent with the
13 disposition alternatives available in 53-21-127.

14 (b) (i) If before removing the youth from the facility the department determines that it will request funds
15 for the youth's placement from the cost containment pool as provided for in 41-5-132, the department may ask
16 the cost containment review panel to make recommendations to the department about the most appropriate
17 placement for the youth. The department shall provide the cost containment review panel with sufficient
18 information about the youth to allow the panel to make its recommendations, and the department shall consider
19 the panel's recommendations before making its placement decision.

20 (ii) The department may request at any time from the cost containment review panel recommendations
21 regarding the youth's placement.

22 (iii) The cost containment review panel shall establish protocols for making recommendations to the
23 department under this section."

24

25 **Section 15.** Section 41-5-1513, MCA, is amended to read:

26 **"41-5-1513. Disposition -- delinquent youth -- restrictions.** (1) If a youth is found to be a delinquent
27 youth, the youth court may enter its judgment making one or more of the following dispositions:

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

29 (b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for
30 placement in a ~~state-youth~~ correctional facility and recommend to the department that the youth not be released

1 until the youth reaches 18 years of age. ~~The provisions of 41-5-355 relating to alternative placements apply to~~
2 ~~placements under this subsection (1)(b).~~ The court may not place a youth adjudicated to be a delinquent youth
3 in a ~~state youth~~ correctional facility for an act that would be a misdemeanor if committed by an adult unless:

- 4 (i) the youth committed four or more misdemeanors in the prior 12 months;
- 5 (ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or
6 a licensed clinical social worker has evaluated the youth and recommends placement in a ~~state youth~~ correctional
7 facility; and
- 8 (iii) the court finds that the youth will present a danger to the public if the youth is not placed in a ~~state~~
9 ~~youth~~ correctional facility.

10 (c) subject to the provisions of subsection (6), require a youth found to be a delinquent youth, as the
11 result of the commission of an offense that would be a violent offense, as defined in 46-23-502, if committed by
12 an adult, to register and remain registered as a violent offender pursuant to Title 46, chapter 23, part 5. The youth
13 court shall retain jurisdiction in a disposition under this subsection to ensure registration compliance.

14 (d) in the case of a delinquent youth who has been adjudicated for a sexual offense, as defined in
15 46-23-502, and is required to register as a sexual offender pursuant to Title 46, chapter 23, part 5, exempt the
16 youth from the duty to register if the court finds that:

- 17 (i) the youth has not previously been found to have committed or been adjudicated for a sexual offense,
18 as defined in 46-23-502; and
- 19 (ii) registration is not necessary for protection of the public and that relief from registration is in the public's
20 best interest;

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

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

29 (2) If a youth has been adjudicated for a sexual offense, as defined in 46-23-502, the youth court shall:

30 (a) prior to disposition, order a psychosexual evaluation that must comply with the provisions of

1 46-18-111;

2 (b) designate the youth's risk level pursuant to 46-23-509;

3 (c) require completion of sexual offender treatment; and

4 (d) for a youth designated under this section and 46-23-509 as a level 3 offender, impose on the youth
5 those restrictions required for adult offenders by 46-18-255(2) unless the youth is approved by the youth court
6 or the department for placement in a home, program, or facility for delinquent youth. Restrictions imposed
7 pursuant to this subsection (2)(d) terminate when the jurisdiction of the youth court terminates pursuant to
8 41-5-205 unless those restrictions are terminated sooner by an order of the court. However, if a youth's case is
9 transferred to district court pursuant to 41-5-203, 41-5-206, 41-5-208, or 41-5-1605, any remaining part of the
10 restriction imposed pursuant to this subsection (2)(d) is transferred to the jurisdiction of the district court and the
11 supervision of the offender is transferred to the department.

12 (3) For a youth designated under this section and 46-23-509 as a level 3 offender, the youth court if the
13 youth is under the youth court's jurisdiction or the department if the youth is under the department's jurisdiction
14 shall notify in writing the superintendent of the school district in which the youth is enrolled of the adjudication,
15 any terms of probation or parole, and the facts of the offense for which the youth was adjudicated, except the
16 name of the victim, and provide a copy of the court's disposition order to the superintendent.

17 (4) The court may not order a local government entity to pay for care, treatment, intervention, or
18 placement. A court may not order a local government entity to pay for evaluation and in-state transportation of
19 a youth, except as provided in 52-5-109.

20 (5) The court may not order a state government entity to pay for care, treatment, intervention, placement,
21 or evaluation that results in a deficit in the annual allocation established for that district under 41-5-130 without
22 approval from the office of court administrator.

23 (6) The duration of registration for a youth who is required to register as a sexual or violent offender must
24 be as provided in 46-23-506, except that the court may, based on specific findings of fact, order a lesser duration
25 of registration."

26

27 **Section 16.** Section 41-5-1522, MCA, is amended to read:

28 **"41-5-1522. Commitment to department -- restrictions on placement.** When a youth is committed
29 to the department, the department shall determine the appropriate placement and rehabilitation program for the
30 youth after considering the recommendations made by the youth placement committee. Placement is subject to

1 the following limitations:

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

6 (2) A youth may not be placed in or transferred to a ~~state adult~~ correctional facility ~~or other facility used~~
7 ~~for the execution of sentences of adults convicted of crimes~~ that does not provide sight and sound separation
8 from adult offenders as required in 28 CFR 115.14.

9 (3) The department may not place a youth in need of intervention, a youth adjudicated delinquent for
10 commission of an act that would not be an offense if committed by an adult, or a youth who violates a consent
11 adjustment in a ~~state youth~~ correctional facility."
12

13 **Section 17.** Section 41-5-1523, MCA, is amended to read:

14 **"41-5-1523. Commitment to department or youth court -- supervision.** (1) A youth placed in a ~~state~~
15 ~~youth~~ correctional facility or other facility or program operated by the department or who signs a parole agreement
16 under 52-5-126 must be supervised by the department.

17 (2) A youth placed in any private, out-of-home facility by the youth court must be supervised by a juvenile
18 probation officer of the youth court.

19 (3) Responsibilities of the juvenile probation officer relating to placement of the youth include but are not
20 limited to:

21 (a) submitting information and documentation necessary for the committee that is making the placement
22 recommendation to determine an appropriate placement for the youth;

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

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

26 (d) managing the youth's case while in a private, out-of-home facility and upon release until supervision
27 is terminated by the youth court."
28

29 **Section 18.** Section 41-5-2002, MCA, is amended to read:

30 **"41-5-2002. Purpose.** The purposes of this part are to:

- 1 (1) provide an alternate method of funding juvenile out-of-home placements, programs, and services;
- 2 (2) increase the ability of youth courts to respond to juvenile delinquency through early intervention and
- 3 expanded community alternatives;
- 4 (3) enhance the ability of youth courts to control costs;
- 5 (4) enhance community safety, hold youth accountable, and promote the competency development of
- 6 youth;
- 7 (5) use local resources for the placement of troubled youth, when appropriate and available;
- 8 (6) reduce placements in out-of-state residential facilities and programs; and
- 9 (7) use ~~state youth~~ correctional facilities when appropriate."

10
11 **Section 19.** Section 41-5-2005, MCA, is amended to read:

12 **"41-5-2005. Youth placement committee recommendation to youth court judge -- acceptance or**
13 **rejection.** (1) (a) Prior to commitment of a youth to the legal custody of the youth court under 41-5-1512 or
14 41-5-1513 or to the department under 41-5-1513, a youth placement committee must be convened. Except as
15 provided in subsection (1)(b), the committee shall submit in writing to the youth court judge its primary and
16 alternative recommendations for placement of the youth.

17 (b) An alternative recommendation is unnecessary if the committee's recommendation is placement in
18 a ~~youth~~ correctional facility.

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

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

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

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

30 (6) The youth court may not order a placement or change of placement that results in a deficit in the

1 annual allocation established for that district under 41-5-130 without approval from the office of court
2 administrator.

3 (7) The youth court shall evaluate the cost of the placement or change of placement and ensure that the
4 placement or change of placement will not overspend the annual allocation provided by the office of court
5 administrator under 41-5-130."

6

7 **Section 20.** Section 45-5-214, MCA, is amended to read:

8 **"45-5-214. Assault with bodily fluid.** (1) A person commits the offense of assault with a bodily fluid if
9 the person purposely causes one of the person's bodily fluids to make physical contact with:

10 (a) a law enforcement officer, a staff person of a correctional or detention facility, or a health care
11 provider, as defined in 50-4-504, including a health care provider performing emergency services, while the health
12 care provider is acting in the course and scope of the health care provider's profession and occupation:

13 (i) during or after an arrest for a criminal offense;

14 (ii) while the person is incarcerated in or being transported to or from a state prison, a county, city, or
15 regional jail or detention facility, or a health care facility; or

16 (iii) if the person is a minor, while the youth is detained in or being transported to or from a county, city,
17 or regional jail or detention facility or a youth detention facility, secure detention facility, regional detention facility,
18 short-term detention center, ~~state youth~~ correctional facility as defined in 41-5-103, health care facility, or shelter
19 care facility; or

20 (b) an emergency responder.

21 (2) A person convicted of the offense of assault with a bodily fluid shall be fined an amount not to exceed
22 \$1,000 or incarcerated in a county jail or a state prison for a term not to exceed 1 year, or both.

23 (3) The youth court has jurisdiction of any violation of this section by a minor, unless the charge is filed
24 in district court, in which case the district court has jurisdiction.

25 (4) As used in this section, the following definitions apply:

26 (a) "Bodily fluid" means any bodily secretion, including but not limited to feces, urine, blood, and saliva.

27 (b) "Emergency responder" means a licensed medical services provider, law enforcement officer,
28 firefighter, volunteer firefighter or officer of a nonprofit volunteer fire company, emergency medical technician,
29 emergency nurse, ambulance operator, provider of civil defense services, or any other person who in good faith
30 renders emergency care or assistance at a crime scene or the scene of an emergency or accident."

1

2 **Section 21.** Section 45-7-307, MCA, is amended to read:

3 **"45-7-307. Transferring illegal articles -- unauthorized communication.** (1) (a) A person commits
4 the offense of transferring illegal articles if the person knowingly or purposely transfers any illegal article or
5 weapon to a person subject to official detention or is transferred any illegal article or weapon by a person subject
6 to official detention.

7 (b) A person convicted of transferring illegal articles or a weapon shall be:

8 (i) imprisoned in a state prison for a term not to exceed 20 years, if the item transferred is a weapon;

9 (ii) imprisoned in a state prison for a term not to exceed 10 years, if the illegal article is a dangerous drug,
10 as defined in 50-32-101; or

11 (iii) imprisoned in a state prison for a term not to exceed 13 months or be fined an amount not more than
12 \$1,500, or both, if the illegal article, other than a weapon or dangerous drug, is transferred to or from a person
13 incarcerated in a state prison, as defined in 53-30-101~~(3)(c)~~, or be fined an amount not more than \$100 or be
14 imprisoned in the county jail for any term not to exceed 10 days, or both, if the illegal article, other than a weapon
15 or dangerous drug, is transferred to or from a person incarcerated in a place other than a state prison.

16 (c) Subsection (1)(b)(iii) does not apply unless the offender knew or was given sufficient notice so that
17 the offender reasonably should have known that the article conveyed was an illegal article.

18 (2) (a) A person commits the offense of unauthorized communication if the person knowingly or
19 purposely communicates with a person subject to official detention without the consent of the person in charge
20 of the official detention.

21 (b) A person convicted of the offense of unauthorized communication shall be fined an amount not to
22 exceed \$100 or imprisoned in the county jail for any term not to exceed 10 days, or both."

23

24 **Section 22.** Section 45-8-318, MCA, is amended to read:

25 **"45-8-318. Possession of deadly weapon by prisoner or youth in facility.** (1) A person commits the
26 offense of possession of a deadly weapon by a prisoner if the person purposely or knowingly possesses or carries
27 or has under the person's custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot,
28 sword cane, billy, knuckles made of any metal or hard substance, knife, razor not including a safety razor, or other
29 deadly weapon while the person is:

30 (a) a person committed to a state prison or incarcerated in a county jail, city jail, or regional jail and is:

- 1 (i) at a state prison, a state prison farm or ranch, or jail;
- 2 (ii) being conveyed to or from a place listed in this subsection (1)(a); or
- 3 (iii) under the custody of prison or jail officials, officers, or employees; or
- 4 (b) a person in a youth detention facility, secure detention facility, regional detention facility, short-term
- 5 detention center, ~~state youth~~ correctional facility, or shelter care facility, as those terms are defined in 41-5-103,
- 6 and is at the facility, being conveyed to or from the facility, or under the custody of the facility officials, officers,
- 7 or employees.

8 (2) A person convicted of the offense of possession of a deadly weapon by a prisoner shall be punished

9 by imprisonment in the state prison for a term not less than 5 years or more than 15 years, by a fine of not more

10 than \$50,000, or by both fine and imprisonment.

11 (3) The youth court has jurisdiction of any violation of subsection (1)(b) unless the charge is filed in

12 district court, in which case the district court has jurisdiction."

13

14 **Section 23.** Section 46-23-201, MCA, is amended to read:

15 **"46-23-201. Prisoners eligible for nonmedical parole -- rulemaking.** (1) Subject to the restrictions

16 contained in subsections (2) through (4) and the parole criteria in 46-23-208, the board may release on

17 nonmedical parole by appropriate order any person who is:

- 18 (a) confined in a state prison;
- 19 (b) sentenced to the state prison and confined in a prerelease center;
- 20 (c) sentenced to prison as an adult pursuant to 41-5-206 and confined in a ~~youth~~ correctional facility as
- 21 defined in 41-5-103;
- 22 (d) sentenced to be committed to the custody of the director of the department of public health and
- 23 human services as provided in 46-14-312 and confined in the Montana state hospital, the Montana developmental
- 24 center, or the Montana mental health nursing care center.

25 (2) Persons under sentence of death, persons sentenced to the department who have been placed by

26 the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences

27 imposed under 46-18-202(2) or 46-18-219 may not be granted a nonmedical parole.

28 (3) A prisoner serving a time sentence may not be paroled under this section until the prisoner has

29 served at least one-fourth of the prisoner's full term.

30 (4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served

1 30 years.

2 (5) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years before a hearing
3 panel conducts another hearing or review. The board shall adopt by administrative rule a process by which a
4 prisoner may request an earlier hearing or review."

5

6 **Section 24.** Section 52-2-302, MCA, is amended to read:

7 **"52-2-302. Definitions.** The following definitions apply to this part:

8 (1) (a) "High-risk child with multiagency service needs" means a child under 18 years of age who is
9 seriously emotionally disturbed, who is placed or who imminently may be placed in an out-of-home setting, and
10 who has a need for collaboration from more than one state agency in order to address the child's needs.

11 (b) The term does not include a child incarcerated in a ~~state youth~~ correctional facility as defined in
12 41-5-103.

13 (2) "Least restrictive and most appropriate setting" means a setting in which a high-risk child with
14 multiagency service needs is served:

15 (a) within the child's family or community; or

16 (b) outside the child's family or community where the needed services are not available within the child's
17 family or community and where the setting is determined to be the most appropriate alternative setting based on:

18 (i) the safety of the child and others;

19 (ii) ethnic and cultural norms;

20 (iii) preservation of the family;

21 (iv) services needed by the child and the family;

22 (v) the geographic proximity to the child's family and community if proximity is important to the child's
23 treatment.

24 (3) "Provider" means an agency of state or local government, a person, or a program authorized to
25 provide treatment or services to a high-risk child with multiagency service needs who is suffering from mental,
26 behavioral, or emotional disorders.

27 (4) "Services" has the meaning as defined in 52-2-202.

28 (5) "System of care" means an integrated service support system that:

29 (a) emphasizes the strengths of the child and the child's family;

30 (b) is comprehensive and individualized; and

- 1 (c) provides for:
- 2 (i) culturally competent and developmentally appropriate services in the least restrictive and most
- 3 appropriate setting;
- 4 (ii) full involvement of families and providers as partners;
- 5 (iii) interagency collaboration; and
- 6 (iv) unified care and treatment planning at the individual child level.
- 7 (6) "Wraparound philosophy of care" means a planning process that is designed to address the needs
- 8 of a child and the child's family and that:
- 9 (a) empowers the family to take the lead in making decisions affecting the planning for support systems
- 10 and services;
- 11 (b) reflects the family's values, preferences, culture, strengths, and needs;
- 12 (c) emphasizes community-based natural and informal support systems;
- 13 (d) involves collaboration among members of a team that is developed with involvement of the family
- 14 and that includes agencies, providers, and others who offer support to the child and family;
- 15 (e) provides services in the least restrictive and most accessible setting possible; and
- 16 (f) contains measurable outcomes that are regularly reviewed by the team and adjusted as necessary."

17

18 **Section 25.** Section 52-5-101, MCA, is amended to read:

19 **"52-5-101. Establishment of ~~state youth~~ correctional facilities -- prohibitions -- definition.** (1) The

20 department of corrections, within the annual or biennial budgetary appropriation, may establish, maintain, and

21 operate correctional facilities to ~~properly~~ provide custody, assessment, care, supervision, treatment, education,

22 rehabilitation, and work and skill development ~~for~~ of youth in need of these services who are. ~~The youth must be~~

23 at least 10 years of age or older and under less than 18 years of age. ~~The facilities include but are not limited to~~

24 ~~the Pine Hills youth correctional facility in Miles City.~~

25 (2) A youth alleged or found to be a youth in need of intervention may not be placed in a ~~state youth~~

26 correctional facility ~~as defined in 41-5-103.~~

27 (3) When a correctional facility previously used as a secure residential facility for youth is repurposed

28 by the department to provide for the custody, treatment, training, and rehabilitation of other correctional

29 populations, serving the needs of youth populations must have priority if youth population increases sufficiently

30 to justify the department reverting to the previous use of the facility.

1 (4) For the purposes of this part, "correctional facility" has the meaning provided in 41-5-103.

2
3 **Section 26.** Section 52-5-108, MCA, is amended to read:

4 **"52-5-108. Medical examination before admission -- records required to accompany youth**
5 **committed.** (1) Before a youth is admitted for any purpose or for any length of time to the Pine Hills youth
6 correctional facility or another facility under an order of commitment to the department of corrections, the youth
7 must be examined by a licensed physician assistant, by an advanced practice registered nurse, or by a licensed
8 physician. A youth committed to the Pine Hills youth correctional facility or the department must be accompanied
9 by the order of commitment, a medical examination report, an adequate social history, and any school records.

10 (2) The medical examination required under this section must be a current, complete physical
11 examination of the youth."
12

13 **Section 27.** Section 52-5-109, MCA, is amended to read:

14 **"52-5-109. Transportation costs -- arrangement for transportation.** (1) Prior to adjudication:

15 (a) for a youth placed in a facility, other than a ~~state youth~~ correctional facility or a detention facility, the
16 judicial district of the youth court to which the youth has been referred shall pay the cost for transporting the youth
17 to the facility and for any other transportation costs incurred while the youth is in the facility. The district shall pay
18 these costs from its annual allocation provided for in 41-5-130.

19 (b) for a youth detained in a detention facility, the county of the youth court to which the youth has been
20 referred shall pay the cost for transporting the youth to the facility and for any other transportation costs while the
21 youth is in the facility.

22 (2) After adjudication:

23 (a) for a youth placed in a nonsecure facility within or outside the state, the judicial district of the youth
24 court in which the youth was adjudicated shall pay the costs for transporting the youth to and from the facility from
25 its annual allocation established under 41-5-130;

26 (b) for a youth committed to the department for placement in an in-state ~~youth~~ correctional facility, the
27 county of the youth court in which the youth was adjudicated shall pay the cost for transporting the youth to the
28 facility. The department shall pay the cost for transporting the youth after the youth is released from the facility
29 or provide other arrangements for transporting the youth.

30 (c) for a youth placed in an out-of-state correctional facility pursuant to 41-5-355, the department shall

1 pay the cost for transporting the youth to the facility and the cost for transporting the youth after the youth is
2 released from the facility.

3 (3) The youth court probation office shall arrange for all transportation to and from an out-of-home
4 placement except when the youth is under the parole supervision of the department or when the department is
5 responsible for transportation costs as provided for in subsections (2)(b) and (2)(c)."

6

7 **Section 28.** Section 52-5-110, MCA, is amended to read:

8 **"52-5-110. Transfer of child to other facility or institution.** The department of corrections, upon
9 recommendation of the superintendent of a facility, may transfer a child resident in one of its youth correctional
10 facilities to any other facility or institution under the jurisdiction and control of the department or under contract
11 to the department."

12

13 **Section 29.** Section 52-5-111, MCA, is amended to read:

14 **"52-5-111. Commutation of sentence to state prison facility and transfer of prisoner to youth**
15 **correctional facility.** (1) Upon the application of a person who has not attained 18 years of age who has been
16 sentenced to a state prison facility or upon the application of the youth's parents or guardian, the governor may,
17 after consulting with the department of corrections and with the approval of the board of pardons and parole,
18 commute the sentence by committing the person ~~who~~ to the department of corrections for placement in a
19 correctional facility if the person may benefit from programs offered at a youth correctional facility. ~~to the~~
20 ~~department of corrections~~ Except as provided in subsection (2), the commutation continues in effect until the
21 youth is 18 years of age or until sooner placed or discharged.

22 (2) If the youth's behavior after being committed to the department of corrections as provided in
23 subsection (1) indicates that the youth is not a proper person to reside at one of the youth correctional facilities,
24 the governor, after consulting with the department of corrections and with the approval of the board of pardons
25 and parole, may revoke the commutation and return the youth to a state prison facility to serve out the youth's
26 unexpired term; ~~and the~~ The time spent by the youth at one of the youth correctional facilities or while a refugee
27 from one of the youth correctional facilities ~~is not considered as a part of~~ may not be credited against the youth's
28 original sentence.

29 (3) ~~Upon~~ Independent of the commutation of sentence procedures provided in subsections (1) and (2),
30 upon recommendation of the warden and with the approval of the department of corrections, a person under 18

1 years of age who has been sentenced to a state prison facility and who may benefit from programs offered at a
 2 youth correctional facility may be transferred to any youth correctional facility under the jurisdiction and control
 3 of the department of corrections.

4 (4) If the youth's behavior after transfer to a youth correctional facility pursuant to subsection (3) indicates
 5 that the youth might be released on parole or that the youth's sentence might be commuted and the youth be
 6 discharged from custody, the superintendent of the facility, with the approval of the department of corrections,
 7 may make an appropriate recommendation to the board of pardons and parole and the governor, who may in their
 8 discretion parole the person or commute the youth's sentence.

9 (5) If the youth's behavior after transfer to a youth correctional facility pursuant to subsection (3) indicates
 10 that the youth is not a proper person to reside in the facility, upon recommendation of the superintendent and with
 11 the approval of the department of corrections, the youth must be returned to a state prison facility to serve out
 12 the unexpired term, and the time spent by the youth in the correctional facility pursuant to the transfer under
 13 subsection (3) may not be credited against the youth's original sentence."
 14

15 **Section 30.** Section 52-5-113, MCA, is amended to read:

16 **"52-5-113. Publication of information to facilitate return of youth leaving a state youth correctional**
 17 **facility or program without permission.** The department may publish the name and picture of and the offense
 18 and other information relating to a youth who has left a state youth correctional facility or program operated by
 19 the department or who is committed to the department and who presents a threat to public safety if the publication
 20 is determined by the department to be necessary to facilitate the youth's return and to protect the public."
 21

22 **Section 31.** Section 52-5-114, MCA, is amended to read:

23 **"52-5-114. Penalty for aiding resident in leaving or not returning to youth correctional facility. (1)**

24 A person is guilty of an offense if the person purposely or knowingly:

- 25 (a) permits or assists a resident of a youth correctional facility to leave a facility without permission;
 26 (b) permits or assists a resident's failure to return to a youth correctional facility from which the resident
 27 had permission to leave;
 28 (c) furnishes or attempts to furnish to a resident a tool, weapon, or other article with the intent of aiding
 29 the resident to leave without permission or to not return; or
 30 (d) harbors or conceals a resident who has left without permission.

1 (2) Upon conviction of a violation of subsection (1), a person shall be punished by imprisonment for a
2 term of not less than 6 months or more than 2 years or by a fine not exceeding \$1,000, or both."

3

4 **Section 32.** Section 52-5-121, MCA, is amended to read:

5 **"52-5-121. Rulemaking authority.** The department of corrections may adopt rules necessary for
6 administration of industries programs authorized in 52-5-120. Rules adopted by the department may include rules
7 regarding:

8 (1) requirements for participation of youth in industries programs;

9 (2) the type of training and experience to be provided to youth under these programs;

10 (3) the type of goods and services to be sold under the industries programs;

11 (4) contracts with private industry for the sale of goods produced or manufactured at ~~state youth~~
12 correctional facilities; and

13 (5) payment of wages to youth working in industries programs."

14

15 **Section 33.** Section 52-5-126, MCA, is amended to read:

16 **"52-5-126. Youth parole agreement.** (1) A youth released by the department of corrections from ~~one~~
17 ~~of the state youth correctional facilities~~ a correctional facility to the supervision, custody, and control of the
18 department shall, before the youth's release, sign a parole agreement containing:

19 (a) a statement of the terms and conditions of the release, including a list of the acts that, if committed
20 by the youth, may result in a return to the facility; and

21 (b) a statement that if the department or any person alleges any violation of the terms and conditions
22 of the agreement, the youth is entitled to a hearing as provided for in 52-5-129 before being returned to the
23 facility.

24 (2) A youth released from a ~~state youth~~ correctional facility for commitment to a mental health facility
25 pursuant to Title 53, chapter 21, part 1, shall sign a parole agreement that will remain in effect until the
26 department no longer has custody of the youth."

27

28 **Section 34.** Section 52-5-128, MCA, is amended to read:

29 **"52-5-128. Detention of youth who violates parole agreement.** A youth who violates the terms and
30 conditions of the youth's parole agreement or who escapes from a ~~state youth~~ correctional facility or program

1 operated by the department may be detained by the department or by a law officer of the state, county, or city
2 of the state upon notice in writing to the officer by the department to the effect that the youth has violated the
3 terms and conditions of the youth's parole agreement or has escaped from a ~~state youth~~ correctional facility or
4 program operated by the department."
5

6 **Section 35.** Section 52-5-129, MCA, is amended to read:

7 **"52-5-129. Hearing on alleged violation of parole agreement -- waiver of hearing -- right to appeal**
8 **outcome.** (1) When it is alleged by a juvenile parole officer that a youth has violated the terms of the youth's
9 parole agreement, the youth must be granted a hearing, unless a hearing is waived as provided in subsection
10 (3), at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after
11 notice has been served on the youth or the youth is detained, whichever is earlier. At the discretion of the
12 hearings officer, this hearing may be held by means of interactive video transmission. The purpose of the hearing
13 is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that
14 the youth should be returned to a youth correctional facility or whether a different plan for custody and supervision
15 of the youth should be pursued by the department of corrections.

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

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

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

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

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

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

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

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

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

4 (g) a record of the hearing; and

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

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

9 (6) (a) The hearings officer shall make a decision for the placement of the youth if:

10 (i) after a hearing the hearings officer finds, by a preponderance of the evidence, that the youth did in
11 fact commit the violation; or

12 (ii) the youth acknowledges, either during the hearing or by written waiver, upon advice of an attorney,
13 that the youth has violated the terms of the youth's parole agreement.

14 (b) In making a placement decision, the hearings officer may consider mitigating or aggravating
15 circumstances.

16 (c) The youth or the youth's attorney may appeal the hearings officer's decision to the department
17 director. The appeal must be made in writing within 5 days of the hearing. The department director or designee
18 shall grant or deny the appeal within 5 days of receipt of the appeal.

19 (7) The youth may appeal the decision of the department director to the district court of the county in
20 which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department
21 director's decision. The youth may obtain a written transcript of the hearing from the department by giving written
22 notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly
23 certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on
24 the appeal based upon the record on appeal. The decision of the department may not be altered except for abuse
25 of discretion or manifest injustice.

26 (8) If the decision made under subsection (6) is to return the youth to a youth correctional facility and the
27 youth appeals that decision, the youth shall await the outcome of the appeal at the facility.

28 ~~(9) If a decision is made under subsection (6) to revoke the parole of a youth who was placed in and
29 released from an alternative facility under 41-5-355 because of overcrowding in a state youth correctional facility,
30 the youth may be placed in a state youth correctional facility if the state youth correctional facility is no longer~~

1 overcrowded."

2

3 **Section 36.** Section 53-1-107, MCA, is amended to read:

4 **"53-1-107. (Temporary) Inmate financial transactions and trust account system.** (1) An inmate of
5 a state prison, as defined in 53-30-101~~(3)(c)(i) through (3)(c)(iii) and (3)(c)(v)~~(1), (2), and (4), shall use the prison
6 inmate trust account system administered by the department of corrections to send money out of or receive
7 money in the facility unless the department grants the inmate an exception. The department may charge an
8 inmate a minimum fee, not to exceed \$2 each month, to administer the inmate's account.

9 (2) The department may, consistent with administrative rules adopted by the department, use a portion
10 of the funds in an inmate's account to:

- 11 (a) satisfy court-ordered restitution, whether or not restitution is a condition of probation or parole;
- 12 (b) satisfy court-ordered child support;
- 13 (c) satisfy court-ordered fines, fees, or costs;
- 14 (d) pay for the inmate's medical and dental expenses and costs of incarceration; and
- 15 (e) pay any other fees, costs, expenses, or monetary sanctions ordered by a court or imposed by a state
16 prison and pay reasonable claims by a debt collection or financial institution.

17 (3) (a) Money taken under subsection (2) for the payment of restitution must be paid in the following
18 order:

- 19 (i) to the victim until the victim's unreimbursed pecuniary loss is satisfied;
- 20 (ii) to the crime victims compensation and assistance program in the department of justice for deposit in
21 the account provided for in 53-9-113 until the state is fully reimbursed for compensation to the victim provided
22 pursuant to Title 53, chapter 9, part 1;
- 23 (iii) to any other government agency that has compensated the victim for the victim's pecuniary loss; and
- 24 (iv) to any insurance company that has compensated the victim for the victim's pecuniary loss.

25 (b) If there is a balance of money in the inmate's account after payments under subsection (2), the
26 department may allow the balance to accumulate in a savings subaccount for the inmate.

27 (4) (a) The department shall adopt rules to set a percentage of earnings not to exceed 25% that an
28 inmate worker is required to save in a savings subaccount.

29 (b) The rules must include that, upon release of an inmate from a state prison, the department shall
30 dispense money directly from the subaccount to the former inmate, the inmate's landlord, or other approved

1 recipients, including service providers.

2 (5) The department shall adopt rules establishing the prison inmate trust account system and criteria for
3 the use of funds under this section. The rules must contain clear guidelines regarding the use of funds that ensure
4 payment under subsection (2) and that inhibit an inmate's ability to deal in contraband or illegal acts within or
5 outside the state prison.

6 (6) An inmate is responsible for the inmate's medical and dental expenses and is obligated to repay the
7 department for reasonable costs incurred by the department for the inmate's medical and dental expenses. The
8 department may investigate, identify, take in any manner allowed by law for the satisfaction of a judgment, and
9 use to pay the inmate's medical and dental expenses any assets of the inmate or any income of the inmate from
10 sources outside the state prison that is not deposited in the account provided for in subsection (1). (Terminates
11 June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

12 **53-1-107. (Effective July 1, 2021) Inmate financial transactions and trust account system.** (1) An
13 inmate of a state prison, as defined in 53-30-101~~(3)(c)(i) through (3)(c)(iii) and (3)(c)(v)~~(1), (2), and (4), shall use
14 the prison inmate trust account system administered by the department of corrections to send money out of or
15 receive money in the facility unless the department grants the inmate an exception. The department may charge
16 an inmate a minimum fee, not to exceed \$2 each month, to administer the inmate's account.

17 (2) The department may, consistent with administrative rules adopted by the department, use a portion
18 of the funds in an inmate's account to:

- 19 (a) satisfy court-ordered restitution, whether or not restitution is a condition of probation or parole;
20 (b) satisfy court-ordered child support;
21 (c) satisfy court-ordered fines, fees, or costs;
22 (d) pay for the inmate's medical and dental expenses and costs of incarceration; and
23 (e) pay any other fees, costs, expenses, or monetary sanctions ordered by a court or imposed by a state
24 prison and pay reasonable claims by a debt collection or financial institution.

25 (3) (a) Money taken under subsection (2) for the payment of restitution must be paid in the following
26 order:

- 27 (i) to the victim until the victim's unreimbursed pecuniary loss is satisfied;
28 (ii) to the crime victims compensation and assistance program in the department of justice for deposit in
29 the state general fund until the state is fully reimbursed for compensation to the victim provided pursuant to Title
30 53, chapter 9, part 1;

1 (iii) to any other government agency that has compensated the victim for the victim's pecuniary loss; and

2 (iv) to any insurance company that has compensated the victim for the victim's pecuniary loss.

3 (b) If there is a balance of money in the inmate's account after payments under subsection (2), the
4 department may allow the balance to accumulate in a savings subaccount for the inmate.

5 (4) (a) The department shall adopt rules to set a percentage of earnings not to exceed 25% that an
6 inmate worker is required to save in a savings subaccount.

7 (b) The rules must include that, upon release of an inmate from a state prison, the department shall
8 dispense money directly from the subaccount to the former inmate, the inmate's landlord, or other approved
9 recipients, including service providers.

10 (5) The department shall adopt rules establishing the prison inmate trust account system and criteria for
11 the use of funds under this section. The rules must contain clear guidelines regarding the use of funds that ensure
12 payment under subsection (2) and that inhibit an inmate's ability to deal in contraband or illegal acts within or
13 outside the state prison.

14 (6) An inmate is responsible for the inmate's medical and dental expenses and is obligated to repay the
15 department for reasonable costs incurred by the department for the inmate's medical and dental expenses. The
16 department may investigate, identify, take in any manner allowed by law for the satisfaction of a judgment, and
17 use to pay the inmate's medical and dental expenses any assets of the inmate or any income of the inmate from
18 sources outside the state prison that is not deposited in the account provided for in subsection (1)."

19

20 **Section 37.** Section 53-1-109, MCA, is amended to read:

21 **"53-1-109. Prison inmate welfare account.** (1) There is an account in the state special revenue fund.
22 The net proceeds from state prison inmate canteen purchases and inmate telephone use, cash proceeds from
23 the disposition of confiscated contraband, and any public money held for the needs of inmates and their families
24 and not otherwise allocated must be deposited in the account. Money in an account established under 53-1-107
25 may not be deposited in the account established in this subsection.

26 (2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of
27 corrections, which may allocate the money referred to in subsection (1) to the state prisons in proportion to the
28 amount that each state prison contributed to the fund. The administrator of each state prison shall consult with
29 the inmates about the use of the money allocated to the state prison and may use the money for the needs of the
30 inmates and their families.

1 (3) For purposes of this section, "state prison" has the meaning provided in 53-30-101(3)(c)(i) through
2 ~~(3)(c)(iii) and (3)(c)(v)~~(1), (2), and (4)."

3
4 **Section 38.** Section 53-1-201, MCA, is amended to read:

5 **"53-1-201. Purpose of department of corrections.** The department of corrections shall use at
6 maximum efficiency the resources of state government in a coordinated effort to:

7 (1) develop and maintain comprehensive services and programs in the field of adult and youth
8 corrections; and

9 (2) provide for the custody, assessment, care, supervision, treatment, education, rehabilitation, and work
10 and skill development of ~~youth alleged to be youth in need of intervention or~~ formally adjudicated delinquent youth
11 who are ~~referred or~~ committed to the department."

12
13 **Section 39.** Section 53-1-202, MCA, is amended to read:

14 **"53-1-202. Department of corrections.** (1) Adult and youth correctional services are included in the
15 department of corrections to carry out the purposes of the department.

16 (2) Adult corrections services consist of the following correctional facilities or programs:

17 (a) ~~the prisons listed a~~ state prison as defined in 53-30-101;

18 (b) appropriate community-based programs for the placement, supervision, and rehabilitation of adult
19 felons who meet the criteria developed by the department for placement:

20 (i) in prerelease centers;

21 (ii) under intensive supervision;

22 (iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

23 (iv) in other appropriate programs;

24 (c) the boot camp authorized by 53-30-403; and

25 (d) the Montana correctional enterprises prison industries training program authorized by 53-30-131.

26 (3) Youth correctional services consist of the following correctional facilities or programs to provide for
27 custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention
28 pursuant to Title 52, chapter 5:

29 (a) Pine Hills ~~youth~~ correctional facility or other ~~state youth~~ correctional facility as defined in 41-5-103;

30 and



1 (b) any other facility or program under contract with the department that provides custody and services
2 for delinquent youth.

3 ~~(4) A state institution or correctional facility may not be moved, discontinued, or abandoned without the~~
4 ~~consent of the legislature."~~

5

6 **Section 40.** Section 53-1-203, MCA, is amended to read:

7 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

8 (a) subject to subsection (6), adopt rules necessary:

9 (i) to carry out the purposes of 41-5-125;

10 (ii) for the siting, establishment, and expansion of prerelease centers;

11 (iii) for the expansion of treatment facilities or programs previously established by contract through a
12 competitive procurement process;

13 (iv) for the establishment and maintenance of residential methamphetamine treatment programs; and

14 (v) for the admission, custody, transfer, and release of persons in department programs except as
15 otherwise provided by law;

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

21 (c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community
22 Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and
23 maintain:

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

30 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as

1 provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for
2 persons convicted of possession of methamphetamine. The department shall issue a request for proposals using
3 a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

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

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

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

11 (g) administer all state and federal funds allocated to the department for delinquent youth, as defined
12 in 41-5-103;

13 (h) collect and disseminate information relating to youth who are committed to the department for
14 placement in a ~~state youth~~ correctional facility as defined in 41-5-103;

15 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed
16 of the specific information, by category, related to delinquent youth in out-of-home care facilities;

17 (j) provide funding for youth who are committed to the department for placement in a ~~state youth~~
18 correctional facility as defined in 41-5-103;

19 (k) administer ~~youth~~ correctional facilities as defined in 41-5-103;

20 (l) provide supervision, care, and control of youth released from a ~~state youth~~ correctional facility as
21 defined in 41-5-103; and

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

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

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

26 (2) The department may contract with private, nonprofit or for-profit Montana corporations to establish
27 and maintain a residential sexual offender treatment program. If the department intends to contract for that
28 purpose, the department shall adopt rules for the establishment and maintenance of that program.

29 (3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a
30 contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit

1 the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a
2 contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit
3 committee. The legislative audit division shall review the contract and make recommendations or comments to
4 the legislative audit committee. The committee may make recommendations or comments to the department. The
5 department shall respond to the committee, accepting or rejecting the committee recommendations or comments
6 prior to entering into the contract.

7 (4) The department of corrections may enter into contracts with nonprofit corporations or associations
8 or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on
9 juvenile parole supervision.

10 (5) The department may contract with Montana corporations to operate a day reporting program as an
11 alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015.
12 The department shall adopt by rule the requirements for a day reporting program, including but not limited to
13 requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance
14 with any conditions of probation, such as drug testing.

15 (6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory
16 powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and
17 expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants,
18 restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited
19 at any location without community support. The prerelease siting, establishment, and expansion must be subject
20 to, and the rules must include, a reasonable mechanism for a determination of community support for or objection
21 to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment,
22 and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3."
23

23

24 **Section 41.** Section 53-1-207, MCA, is amended to read:

25 **"53-1-207. Authorization of inmate labor for designated construction projects -- exemptions. (1)**

26 The department of corrections is authorized to use inmate labor for the purpose of construction projects at ~~the~~
27 ~~Montana~~ a state prison that are authorized by the legislature.

28 (2) The department of administration shall provide for construction of the projects authorized by this
29 section, which are to be built by the lowest responsible bidder, with contract specifications to allow the use of
30 inmate labor. The percentage of inmate labor must be determined prior to the advertising for bid of the projects

1 through negotiations among the department of corrections, the department of administration, representatives of
 2 construction industry employers, and representatives of the building trades."

3

4 **Section 42.** Section 53-30-101, MCA, is amended to read:

5 **"53-30-101. Location and function of prisons -- definitions State prison -- definition.** ~~(1) The~~
 6 ~~correctional facility at Deer Lodge is the Montana state prison, and its primary function is to provide for the~~
 7 ~~custody, treatment, training, and rehabilitation of adult male criminal offenders.~~

8 ~~————(2) The correctional facility located in Billings is the Montana women's prison, and its primary function~~
 9 ~~is to provide for the custody, treatment, training, and rehabilitation of adult female criminal offenders.~~

10 ~~————(3) As used in this title, unless the context indicates otherwise, the following definitions apply "state~~
 11 ~~prison" means:~~

12 ~~(a) "Montana state prison" means the correctional facility located at Deer Lodge.~~

13 ~~————(b) "Montana women's prison" or "women's prison" means the correctional facility located at Billings.~~

14 ~~————(c) "State prison" means:~~

15 ~~————(i) the Montana state prison;~~

16 ~~————(ii) the Montana women's prison;~~

17 ~~(1) a state penal or correctional institution whose primary function is to provide for the custody, treatment,~~
 18 ~~training, and rehabilitation of adult criminal offenders;~~

19 ~~(iii)(2) a state penal or correctional facility portion of a Montana regional correctional facility;~~

20 ~~(iv)(3) a detention center, state penal, or correctional facility in another jurisdiction detaining Montana~~
 21 ~~inmates from Montana pursuant to 53-30-106;~~

22 ~~(v)(4) a private correctional facility or penal facility licensed by the department of corrections or a private~~
 23 ~~correctional facility or penal facility portion of a Montana regional correctional facility licensed by the department~~
 24 ~~of corrections; or~~

25 ~~(vi)(5) a combination of the facilities listed in this subsection (3)(c) section."~~

26

27 **Section 43.** Section 53-30-102, MCA, is amended to read:

28 **"53-30-102. Qualifications of warden of state prison warden and warden of women's prison.** The
 29 warden of the Montana a state prison and the warden of the women's prison must be persons trained through
 30 education and experience in directing a custody, treatment, training, or rehabilitation, or custodial program in a

1 penal or correctional institution."

2

3 **Section 44.** Section 53-30-141, MCA, is amended to read:

4 **"53-30-141. Extension of limits of confinement.** (1) The department of corrections may extend the
5 limits of confinement of the ~~Montana~~ state prison in Deer Lodge for purposes of housing outside the prison fence
6 inmates who:

7 (a) are employed in ranch or agricultural industry programs; and

8 (b) have demonstrated sufficient reliability and trustworthiness.

9 (2) Housing units outside the confines of the prison fence may be created by renovation of existing
10 buildings or by the erection of modular-type units and associated facilities on the prison ranch.

11 (3) For the purpose of expediting the acquisition and construction of housing units authorized in
12 subsection (2) the department of administration may exempt the project from provisions of Montana law relating
13 to the employment of architects, advertising, labor, and wages. The department of administration need not comply
14 with any state bidding requirements that would preclude a sole source purchase."

15

- END -