

1 HOUSE BILL NO. 500

2 INTRODUCED BY K. SEEKINS-CROWE

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING YOUTH COURT FEES, COSTS, CERTAIN FINES,  
5 AND CERTAIN FINANCIAL OBLIGATIONS; CREATING REPORTING REQUIREMENTS TO THE CRIMINAL  
6 JUSTICE OVERSIGHT COUNCIL; AMENDING SECTIONS 40-4-204, 40-5-303, 40-5-601, 40-5-701, 41-5-103,  
7 41-5-132, 41-5-1304, 41-5-1412, 41-5-1501, 41-5-1503, 41-5-1511, 41-5-1512, 41-5-1513, AND 41-5-1703,  
8 MCA; AND REPEALING SECTIONS 41-5-112 AND 41-5-1525, MCA."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11  
12 NEW SECTION. Section 1. Certain costs, obligations, and fees prohibited -- report. (1) (a) A  
13 court, agency, assessment officer, or juvenile probation officer may not order a youth, the youth's parents, or  
14 the youth's guardian to pay:

15 (i) a contribution, including but not limited to a contribution for any part of the costs for  
16 adjudication, disposition, attorney fees for costs of prosecuting or defending the youth, costs of detention,  
17 supervision, care, custody, or necessary medical, dental, or health treatment; or

18 (ii) fines, except in the cases described in 41-5-203(2).

19 (b) A city, town, or county may not impose a legal financial obligation, fee, fine, or cost associated  
20 with a juvenile offense unless there is express statutory authority for the legal financial obligation, fee, fine, or  
21 cost.

22 (2) Nothing in this section may be construed to prohibit billing public and private insurance or  
23 coverage to provide services under the Montana Youth Court Act.

24 ~~(2)~~(3) (a) On [the effective date of this act], all outstanding fees or costs owed by a youth, the youth's  
25 parents, or the youth's guardian are void and uncollectable, and any order requiring the payment of fees or  
26 costs is unenforceable.

27 (b) Within 6 months of [the effective date of this act], the office of court administrator shall report to  
28 the criminal justice oversight council established in 53-1-216 the number of orders vacated or partially vacated

1 in each judicial district pursuant to this section. The report must include the amount of the balances vacated in  
2 each judicial district.

3

4 **Section 2.** Section 40-4-204, MCA, is amended to read:

5 **"40-4-204. Child support -- orders to address health insurance -- withholding of child support.**

6 (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall  
7 order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the  
8 child's support, without regard to marital misconduct.

9 (2) The court shall consider all relevant factors, including:

10 (a) the financial resources of the child;

11 (b) the financial resources of the parents;

12 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

13 (d) the physical and emotional condition of the child and the child's educational and medical

14 needs;

15 (e) the age of the child;

16 (f) the cost of day care for the child;

17 (g) any parenting plan that is ordered or decided upon; and

18 (h) the needs of any person, other than the child, whom either parent is legally obligated to

19 support.

20 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall

21 determine the child support obligation by applying the standards in this section and the uniform child support

22 guidelines adopted by the department of public health and human services pursuant to 40-5-209. The

23 guidelines must be used in all cases, including cases in which the order is entered upon the default of a party

24 and those in which the parties have entered into an agreement regarding the support amount. A verified

25 representation of the defaulting parent's income, based on the best information available, may be used when a

26 parent fails to provide financial information for use in applying the guidelines. The amount determined under the

27 guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and

28 convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the

1 parties or that it is inappropriate in that particular case.

2 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall  
3 state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have agreed  
4 to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount  
5 must include a statement of the amount of support that would have ordinarily been ordered under the  
6 guidelines.

7 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for the  
8 child's support, the court shall state its reasons for not ordering child support.

9 (d) Child support obligations established under this section are subject to the registration and  
10 processing provisions of Title 40, chapter 5, part 9.

11 (4) Each temporary or final district court judgment, decree, or order establishing a child support  
12 obligation under this title and each modification of a final order for child support must include a medical support  
13 order as provided for in Title 40, chapter 5, part 8.

14 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception  
15 is included in the support order, a support obligation established by judgment, decree, or order under this  
16 section, whether temporary or final, and each modification of an existing support obligation under 40-4-208  
17 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or  
18 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a  
19 payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of  
20 support without need for an amendment to the support order or for any further action by the court.

21 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order  
22 must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's  
23 income may be subject to income-withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to  
24 include a warning statement in a judgment or order does not preclude the use of withholding procedures.

25 (c) If a support order subject to income withholding is expressed in terms of a monthly obligation,  
26 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular  
27 pay period. When an order is annualized and withheld on a weekly or biweekly basis under this section, the  
28 support withheld from the obligor may be retained by the obligee when it exceeds the obligor's monthly support

1 obligation if the excess support is a result of annualized withholding.

2 (d) If an obligor is exempted from paying support through income withholding, the support order  
3 must include a requirement that whenever the case is receiving services under Title IV-D of the Social Security  
4 Act, support payments must be paid through the department of public health and human services as provided in  
5 40-5-909.

6 (6) (a) Each district court judgment, decree, or order that establishes paternity or establishes or  
7 modifies a child support obligation must include a provision requiring the parties to promptly file with the court  
8 and to update, as necessary, information on:

9 (i) the party's identity, residential and mailing addresses, telephone number, [social security  
10 number,] and driver's license number;

11 (ii) the name, address, and telephone number of the party's employer; and

12 (iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier  
13 or health benefit plan, the policy identification number, the names of the persons covered, and any other  
14 pertinent information regarding coverage or, if the child is not covered, information as to the availability of  
15 coverage for the child through the party's employer.

16 (b) The court shall keep the information provided under subsection (6)(a) confidential except that  
17 the information may be provided to the department of public health and human services for use in administering  
18 Title IV-D of the Social Security Act, to the parties, and to each party's counsel of record. The information  
19 provided under subsection (6)(a) may be included on the case registry and vital statistics reporting form filed  
20 with the court pursuant to 40-5-908(1).

21 (c) The order must also require that in any subsequent child support enforcement action, upon  
22 sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or  
23 the department of public health and human services, if the department is providing services under Title IV-D of  
24 the Social Security Act, may consider due process requirements for notice and service of process met with  
25 respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the  
26 party's employer's address reported to the court.

27 (7) A judgment, decree, or order establishing a child support obligation under this part may be  
28 modified or adjusted as provided in 40-4-208 or, if the department of public health and human services is

1 providing services under Title IV-D of the Social Security Act, may be modified or adjusted by the department  
2 as provided for in 40-5-271 through 40-5-273, 40-5-277, and 40-5-278.

3 (8) (a) A district court judgment, decree, or order that establishes or modifies a child support  
4 obligation must include a provision requiring the child support obligation to be paid, without need for further  
5 court order:

6 (i) to the person with whom the child resides by legal order;

7 (ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical  
8 care and control of the child to another person, organization, or agency, to the person, organization, or agency  
9 to whom physical custody has been relinquished;

10 (iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason to  
11 receive or collect the child support obligation, to the person, organization, or agency having the right to receive  
12 or collect the payment; or

13 (iv) to the court for the benefit of the minor child.

14 (b) When the department of public health and human services is providing services under Title IV-  
15 D of the Social Security Act, payment of support must be made through the department for distribution to the  
16 person, organization, or agency entitled to the payment.

17 (c) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject to  
18 the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order or for  
19 any further action by the court.

20 (9) A judgment, decree, or order that establishes or modifies a child support obligation must  
21 include a provision that if a parent or guardian is the obligee under a child support order and is obligated to pay  
22 a contribution for the same child under 41-3-438, ~~41-5-1304~~, or ~~41-5-1512~~, the parent or guardian assigns and  
23 transfers to the department of public health and human services all rights that the parent or guardian may have  
24 to child support that are not otherwise assigned under 53-2-613.

25 (10) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the  
26 Internal Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan  
27 administrator of the plan for which benefits are being distributed by the order, the child support enforcement  
28 division, the parties, and each party's counsel of record. (Bracketed language terminates on occurrence of

1 contingency--sec. 1, Ch. 27, L. 1999.)"

2

3 **Section 3.** Section 40-5-303, MCA, is amended to read:

4 **"40-5-303. Petition for income deduction -- who may initiate.** (1) If an obligor is exempted from  
5 immediate income withholding under 40-5-315 or is not otherwise subject to an income-withholding order, the  
6 obligor's income may be withheld for the payment of child support if the obligor becomes delinquent in the  
7 payment of support, a person or entity referred to in subsection (2) notifies the obligor that income withholding  
8 will be initiated if the delinquent amount is not paid within 8 days of the date of the notice, and the obligor does  
9 not pay the delinquent amount within that time. Notification that income withholding will be initiated if a  
10 delinquency is not paid within 8 days of the date of the notice is not necessary if such a notice was given for a  
11 prior delinquency and the prior delinquency in fact existed. This notice is different from the notice required by  
12 40-5-305.

13 (2) Income withholding for the payment of child support may be initiated by:

14 (a) the person named as the recipient of the child support payments in the child support order;

15 (b) the child or the guardian of the child named in the child support order; or

16 (c) the department of public health and human services; ~~or~~

17 ~~(d) the state of Montana, including the department of corrections and respective county attorneys, for~~  
18 ~~the purpose of enforcing contribution orders under 41-5-1525. These contribution orders are considered to be~~  
19 ~~child support orders for purposes of enforcement under this chapter.~~

20 (3) (a) At the request of an initiating party who has determined that an obligor is delinquent, the  
21 district court shall issue an order for income deductions for immediate service upon the obligor's payor or  
22 payors. The order is limited to current support unless modified to include arrears as provided in 40-5-308.

23 (b) At the same time an income deduction order is issued, the requesting party shall notify the  
24 obligor as provided in 40-5-305 that income deductions have been initiated.

25 (4) Deductions under this section for current support may be terminated only if:

26 (a) the district court determines after a hearing that the obligor was not delinquent when the  
27 deduction order was issued;

28 (b) the obligation to pay support has terminated and all delinquencies are paid in full; or

1 (c) the department of public health and human services has superseded the deduction order under  
2 authority of Title 40, chapter 5, part 4.

3 (5) As used in this part, the following definitions apply:

4 (a) "Employer" includes a payor.

5 (b) (i) "Income" means any form of periodic payment to a person, regardless of source, including  
6 commissions, bonuses, workers' compensation, disability benefits, payments under a pension or retirement  
7 program, interest and earnings, and wages.

8 (ii) Income does not include:

9 (A) an amount, other than creditor claims, required by law to be withheld, including federal, state,  
10 and local taxes and social security; or

11 (B) an amount exempted from judgment, execution, or attachment by federal or state law.

12 (c) "Payor" means any entity that pays income to an obligor on a periodic basis and includes any  
13 person, firm, corporation, association, employer, trustee, political subdivision, or state agency or an agent of  
14 any one of them, subject to the jurisdiction of the courts of this state under Rule 4(b) of the Montana Rules of  
15 Civil Procedure."

16

17 **Section 4.** Section 40-5-601, MCA, is amended to read:

18 **"40-5-601. Failure to pay support -- civil contempt.** (1) For purposes of this section, "support"  
19 means child support; spousal support; health insurance, medical, dental, and optical payments; day-care  
20 expenses; and any other payments due as support under a court or administrative order; ~~and contributions~~  
21 ~~ordered pursuant to 41-5-1525.~~ Submission of health insurance claims is a support obligation if health  
22 insurance coverage is ordered.

23 (2) If a person obligated to provide support fails to pay as ordered, the payee or assignee of the  
24 payee of the support order may petition a district court to find the obligated person in contempt.

25 (3) The petition may be filed in the district court:

26 (a) that issued the support order;

27 (b) of the judicial district in which the obligated person resides; or

28 (c) of the judicial district in which the payee or assignee of the payee resides or has an office.

1           (4)     Upon filing of a verified petition alleging facts constituting contempt of the support order, the  
2 district court shall issue an order requiring the obligated person to appear and show cause why the obligated  
3 person should not be held in contempt and punished under this section.

4           (5)     The obligated person is presumed to be in contempt upon a showing that:

5           (a)     there is a support order issued by a court or administrative agency of this or another state, an  
6 Indian tribe, or a country with jurisdiction to enter the order;

7           (b)     the obligated person had actual or constructive knowledge of the order; and

8           (c)     the obligated person failed to pay support as ordered.

9           (6)     Certified payment records maintained by a clerk of court or administrative agency authorized by  
10 law or by the support order to collect support are admissible in a proceeding under this section and are prima  
11 facie evidence of the amount of support paid and any arrearages under the support order.

12          (7)     Following a showing under subsection (5), the obligated person may move to be excused from  
13 the contempt by showing clear and convincing evidence that the obligated person:

14          (a)     has insufficient income to pay the arrearages;

15          (b)     lacks personal or real property that can be sold, mortgaged, or pledged to raise the needed  
16 sum;

17          (c)     has unsuccessfully attempted to borrow the sum from a financial institution;

18          (d)     has no other source, including relatives, from which the sum can be borrowed or secured;

19          (e)     has a valid out-of-court agreement with the payee waiving, deferring, or otherwise  
20 compromising the support obligation; or

21          (f)     cannot, for some other reason, reasonably comply with the order.

22          (8)     In addition to the requirement of subsection (7), the obligated person shall also show by clear  
23 and convincing evidence that factors constituting the excuse were not caused by the obligated person  
24 voluntarily:

25          (a)     remaining unemployed or underemployed when there is employment suitable to the obligated  
26 person's skills and abilities available within a reasonable distance from the obligated person's residence;

27          (b)     selling, transferring, or encumbering real or personal property for fictitious or inadequate  
28 consideration within 6 months prior to a failure to pay support when due;



1 (c) selling or transferring real property without delivery of possession within 6 months prior to a  
2 failure to pay support when due or, if the sale or transfer includes a reservation of a trust for the use of the  
3 obligated person, purchasing real or personal property in the name of another person or entity;

4 (d) continuing to engage in an unprofitable business or contract unless the obligated person  
5 cannot reasonably be removed from the unprofitable situation; or

6 (e) incurring debts subsequent to entry of the support order that impair the obligated person's  
7 ability to pay support.

8 (9) If the obligated person is not excused under subsections (7) and (8), the district court shall find  
9 the obligated person in contempt of the support order. For each failure to pay support under the order, the  
10 district court shall order punishment as follows:

11 (a) not more than 5 days incarceration in the county jail;

12 (b) not more than 120 hours of community service work;

13 (c) not more than a \$500 fine; or

14 (d) any combination of the penalties in subsections (9)(a) through (9)(c).

15 (10) An order under subsection (9) must include a provision allowing the obligated person to purge  
16 the contempt. The obligated person may purge the contempt by complying with an order requiring the obligated  
17 person to:

18 (a) seek employment and periodically report to the district court all efforts to find employment;

19 (b) meet a repayment schedule;

20 (c) compensate the payee for the payee's attorney fees, costs, and expenses for a proceeding  
21 under this section;

22 (d) sell or transfer real or personal property or transfer real or personal property to the payee, even  
23 if the property is exempt from execution;

24 (e) borrow the arrearage amount or report to the district court all efforts to borrow the sum;

25 (f) meet any combination of the conditions in subsections (10)(a) through (10)(e); or

26 (g) meet any other conditions that the district court in its discretion finds reasonable.

27 (11) If the obligated person fails to comply with conditions for purging contempt, the district court  
28 shall immediately find the obligated person in contempt under this section and impose punishment.

1 (12) A proceeding under this section must be brought within 3 years of the date of the last failure to  
2 comply with the support order."  
3

4 **Section 5.** Section 40-5-701, MCA, is amended to read:

5 **"40-5-701. Definitions.** As used in this part, the following definitions apply:

6 (1) (a) "Child" means:

7 (i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member  
8 of the armed forces of the United States;

9 (ii) a person under 19 years of age who is still in high school;

10 (iii) a person who is mentally or physically incapacitated when the incapacity began prior to that  
11 person reaching 18 years of age; and

12 (iv) in IV-D cases, a person for whom:

13 (A) support rights are assigned under 53-2-613;

14 (B) a public assistance payment has been made;

15 (C) the department is providing support enforcement services under 40-5-203; or

16 (D) the department has received a referral for IV-D services under the provisions of the Uniform  
17 Interstate Family Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform  
18 Reciprocal Enforcement of Support Act, or Title IV-D of the Social Security Act.

19 (b) The term may not be construed to limit the ability of the department to enforce a support order  
20 according to its terms when the order provides for support extending beyond the time the child reaches 18  
21 years of age.

22 (2) "Conservation activity" means an activity for which a wildlife conservation license is issued by  
23 the department of fish, wildlife, and parks pursuant to 87-2-201.

24 (3) "Delinquency" means a support debt or support obligation due under a support order in an  
25 amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to  
26 suspend a license.

27 (4) "Department" means the department of public health and human services.

28 (5) "License" means a license, certificate, registration, permit, or any other authorization issued by

1 an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation,  
2 profession, conservation activity, or any other privilege that is subject to suspension, revocation, forfeiture,  
3 termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

4 (6) "Licensing authority" means any department, division, board, agency, or instrumentality of this  
5 state that issues a license.

6 (7) "Obligee" means:

7 (a) a person to whom a support debt or support obligation is owed; or

8 (b) a public agency of this or another state or an Indian tribe that has the right to receive current or  
9 accrued support payments or that is providing support enforcement services under this chapter.

10 (8) "Obligor" means a person who owes a duty of support or who is subject to a subpoena or  
11 warrant in a paternity or child support proceeding.

12 (9) "Order suspending a license" means an order issued by a support enforcement entity to  
13 suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social  
14 security number of the obligor.

15 (10) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity  
16 that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or  
17 involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a  
18 support debt and, if applicable, current and future support.

19 (11) "Subpoena" means a writ or order issued by a court or the department in a proceeding or as  
20 part of an investigation related to the paternity or support of a child that commands a person to appear at a  
21 particular place and time to testify or produce documents or things under the person's control.

22 (12) "Support debt" or "support obligation" means the amount created by the failure to provide or  
23 pay:

24 (a) support to a child under the laws of this or any other state or under a support order;

25 (b) court-ordered spousal maintenance or other court-ordered support for the child's custodial  
26 parent; or

27 (c) fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is  
28 authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and

1 collection of child support or spousal maintenance or support; ~~or~~

2 (d) ~~contributions ordered pursuant to 41-5-1525.~~

3 (13) "Support enforcement entity" means:

4 (a) in IV-D cases, the department; or

5 (b) in all other cases, the district court that entered the support order or a district court in which the  
6 support order is registered.

7 (14) (a) "Support order" means an order that provides a determinable amount for temporary or final  
8 periodic payment of a support debt or support obligation and that may include payment of a determinable or  
9 indeterminable amount for insurance covering the child issued by:

10 (i) a district court of this state;

11 (ii) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

12 (iii) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

13 (iv) an administrative agency of another state or an Indian tribe with a hearing function and process  
14 similar to those of the department.

15 (b) If an action for child support is commenced under this part and the context so requires, support  
16 order also includes:

17 (i) judgments and orders providing periodic payments for the maintenance or support of the child's  
18 custodial parent; and

19 (ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the  
20 support enforcement entity is authorized to collect by the use of any procedure available to the entity for the  
21 payment, enforcement, and collection of child support or spousal maintenance or support.

22 (15) "Suspension" includes the withdrawal, withholding, revocation, forfeiture, or nonissuance of a  
23 license and license privileges.

24 (16) "Warrant" means a bench warrant, a warrant to appear, an order to show cause, or any other  
25 order issued by a court relating to the appearance of a party in a paternity or child support proceeding.

26 (17) "IV-D case" means a case in which the department is providing support enforcement services  
27 as a result of:

28 (a) an assignment of support rights under 53-2-613;

- 1 (b) a payment of public assistance;
- 2 (c) an application for support enforcement services under 40-5-203; or
- 3 (d) a referral for services from an agency of another state or an Indian tribe under the provisions of
- 4 the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support
- 5 Act, the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act."
- 6

7 **Section 6.** Section 41-5-103, MCA, is amended to read:

8 **"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires

9 otherwise, the following definitions apply:

- 10 (1) "Adult" means an individual who is 18 years of age or older.
- 11 (2) "Agency" means any entity of state or local government authorized by law to be responsible for
- 12 the care or rehabilitation of youth.
- 13 (3) "Assessment officer" means a person who is authorized by the court to provide initial intake
- 14 and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.
- 15 (4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.
- 16 (5) "Conditional release" means the release of a youth from a correctional facility subject to the
- 17 terms and conditions of the conditional release agreement provided for in 52-5-126.
- 18 (6) (a) "Correctional facility" means a public secure residential facility or a private secure
- 19 residential facility under contract with the department and operated to provide for the custody, treatment,
- 20 training, and rehabilitation of:
  - 21 (i) formally adjudicated delinquent youth;
  - 22 (ii) convicted adult offenders or criminally convicted youth; or
  - 23 (iii) a combination of the populations described in subsections (6)(a)(i) and (6)(a)(ii) under
  - 24 conditions set by the department in rule.
- 25 (b) The term does not include a state prison as defined in 53-30-101.
- 26 (7) "Cost containment pool" means an account from which funds are allocated by the office of
- 27 court administrator under 41-5-132 to a judicial district that exceeds its annual allocation for juvenile out-of-
- 28 home placements, programs, and services or to the department for costs incurred under 41-5-1504.

- 1 (8) "Cost containment review panel" means the panel established in 41-5-131.
- 2 (9) "Court", when used without further qualification, means the youth court of the district court.
- 3 (10) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant  
4 to 41-5-206.
- 5 (11) (a) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the  
6 youth has been given.
- 7 (b) The term does not include a person who has only physical custody.
- 8 (12) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the  
9 Montana Youth Court Act as a youth:
- 10 (a) who has committed an offense that, if committed by an adult, would constitute a criminal  
11 offense;
- 12 (b) who has been placed on probation as a delinquent youth and who has violated any condition of  
13 probation; or
- 14 (c) who has violated the terms and conditions of the youth's conditional release agreement.
- 15 (13) "Department" means the department of corrections provided for in 2-15-2301.
- 16 (14) (a) "Department records" means information or data, either in written or electronic form,  
17 maintained by the department pertaining to youth who are committed under 41-5-1513(1)(b).
- 18 (b) Department records do not include information provided by the department to the department  
19 of public health and human services' management information system or information maintained by the youth  
20 court through the office of court administrator.
- 21 (15) "Detention" means the holding or temporary placement of a youth in the youth's home under  
22 home arrest or in a facility other than the youth's own home for:
- 23 (a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken  
24 into custody and before final disposition of the youth's case;
- 25 (b) contempt of court or violation of a valid court order; or
- 26 (c) violation of the terms and conditions of the youth's conditional release agreement.
- 27 (16) "Detention facility" means a physically restricting facility designed to prevent a youth from  
28 departing at will. The term includes a youth detention facility, short-term detention center, and regional

1 detention facility.

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

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

6 (19) "Final disposition" means the implementation of a court order for the disposition or placement  
7 of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-  
8 5-1525 41-5-1524.

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

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

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

17 (22) "Guardian" means an adult:

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

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

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

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

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

28 (25) (a) "Informal youth court records" means information or data, either in written or electronic form,

1 maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and  
2 includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and  
3 supervision records of probationers.

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

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

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

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

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

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

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

- 18 (i) have physical custody of the youth;
- 19 (ii) determine with whom the youth shall live and for what period;
- 20 (iii) protect, train, and discipline the youth; and
- 21 (iv) provide the youth with food, shelter, education, and ordinary medical care.

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

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

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

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



- 1 (33) (a) "Parent" means the natural or adoptive parent.
- 2 (b) The term does not include:
- 3 (i) a person whose parental rights have been judicially terminated; or
- 4 (ii) the putative father of an illegitimate youth unless the putative father's paternity is established by
- 5 an adjudication or by other clear and convincing proof.
- 6 (34) "Probable cause hearing" means the hearing provided for in 41-5-332.
- 7 (35) "Regional detention facility" means a youth detention facility established and maintained by two
- 8 or more counties, as authorized in 41-5-1804.
- 9 (36) "Restitution" means payments in cash to the victim or with services to the victim or the general
- 10 community when these payments are made pursuant to a consent adjustment, consent decree, or other youth
- 11 court order.
- 12 (37) "Running away from home" means that a youth has been reported to have run away from
- 13 home without the consent of a parent or guardian or a custodian having legal custody of the youth.
- 14 (38) "Secure detention facility" means a public or private facility that:
- 15 (a) is used for the temporary placement of youth or individuals accused or convicted of criminal
- 16 offenses or as a sanction for contempt of court, violation of the terms and conditions of the youth's conditional
- 17 release agreement, or violation of a valid court order; and
- 18 (b) is designed to physically restrict the movements and activities of youth or other individuals held
- 19 in lawful custody of the facility.
- 20 (39) "Serious juvenile offender" means a youth who has committed an offense that would be
- 21 considered a felony offense if committed by an adult and that is an offense against a person, an offense against
- 22 property, or an offense involving dangerous drugs.
- 23 (40) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.
- 24 (41) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to
- 25 the facilities enumerated in 41-5-347.
- 26 (42) "Short-term detention center" means a detention facility licensed by the department for the
- 27 temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal
- 28 holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility,

1 youth assessment center, or shelter care facility.

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

5 (44) "Victim" means:

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

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

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

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

12 (46) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-  
13 1203.

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

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

19 (49) "Youth court" means the court established pursuant to this chapter to hear all proceedings in  
20 which a youth is alleged to be a delinquent youth, a youth in need of intervention, or a youth alleged to have  
21 violated the terms and conditions of the youth's conditional release agreement and includes the youth court  
22 judge, juvenile probation officers, and assessment officers.

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

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

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

27 (b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a  
28 sanction for contempt of court, violation of the terms and conditions of the youth's conditional release

1 agreement, or violation of a valid court order.

2 (51) "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  
4 criminal 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  
7 the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the  
8 youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate,  
9 resolve, or 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 7.** Section 41-5-132, MCA, is amended to read:

14 **"41-5-132. Cost containment pool -- allocation of appropriated funds -- allocation from pool --**

15 **deposit of unexpended funds.** (1) (a) The office of court administrator shall establish a cost containment pool.  
16 After considering the cost containment review panel's recommendation as provided for in subsection (1)(b), the  
17 office of court administrator shall allocate to the cost containment pool at the beginning of each fiscal year not  
18 less than \$1 million from the funds appropriated for juvenile placements.

19 (b) The cost containment review panel shall submit to the office of court administrator a  
20 recommended amount to be allocated to the cost containment pool at least 1 month prior to the start of each  
21 fiscal year. The cost containment review panel shall establish a methodology for determining the recommended  
22 amount to be allocated to the cost containment pool.

23 (2) Before a judicial district exceeds its annual allocation under 41-5-130 for juvenile out-of-home  
24 placements, programs, and services, the judicial district shall submit to the cost containment review panel a  
25 request for an allocation from the cost containment pool. After reviewing the request, the cost containment  
26 review panel shall recommend to the office of court administrator whether an allocation from the cost  
27 containment pool should be made to the judicial district. After considering the cost containment review panel's  
28 recommendation, the office of court administrator may approve the judicial district's request and disburse funds

1 from the pool for expenditure by the judicial district.

2 (3) (a) According to criteria and procedures established by the cost containment review panel, the  
3 cost containment review panel may authorize an allocation from the cost containment pool to the department  
4 for a request submitted under subsection (3)(b).

5 (b) The department may request that the cost containment review panel reimburse the department  
6 from the cost containment pool for costs incurred under 41-5-1504(3) for placing a youth found to be suffering  
7 from a mental disorder, including costs for transporting the youth. Before requesting reimbursement, the  
8 department shall expend any ~~parental contributions made on behalf of the youth,~~ federal funds available for the  
9 youth's care for which the department has spending authority, and private insurance payments received for the  
10 youth's treatment.

11 (4) In addition to any disbursement made by the office of court administrator under subsection (2)  
12 or (3), the office may expend funds from the cost containment pool to:

13 (a) reimburse cost containment review panel members or alternates for travel expenses, as  
14 provided in 2-18-501 through 2-18-503, and to pay the actual costs incurred in conducting a cost containment  
15 review panel meeting, excluding salary and benefits for employees providing support services to the cost  
16 containment review panel; and

17 (b) conduct an evaluation of out-of-home placements, programs, and services as provided in 41-5-  
18 2003. The office of court administrator may not expend more than \$50,000 each year from the cost containment  
19 pool to conduct the evaluation.

20 (5) The office of court administrator shall deposit any amount remaining in the cost containment  
21 pool at the end of each fiscal year into the youth court intervention and prevention account provided for in 41-5-  
22 2011."

23

24 **Section 8.** Section 41-5-1304, MCA, is amended to read:

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

27 (a) probation;

28 (b) placement of the youth in substitute care in a youth care facility, as defined in 52-2-602 and

1 pursuant to a recommendation made under 41-5-121;

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

4 (d) restitution, as provided in 41-5-1521, upon approval of the youth court judge;

5 (e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10;

6 (f) confiscation of the youth's driver's license, if the youth has one, by the juvenile probation officer

7 for a specified period of time, not to exceed 90 days. The juvenile probation officer shall notify the department  
8 of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the

9 youth's driving record. The juvenile probation officer shall notify the department of justice when the confiscated  
10 driver's license has been returned to the youth. A youth's driver's license may be confiscated under this

11 subsection more than once. The juvenile probation officer may, in the juvenile probation officer's discretion and  
12 with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination

13 of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor  
14 in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a

15 vehicle or vehicles driven by the youth, nor may it be used as grounds for denying coverage for an accident or  
16 other occurrence under an existing policy.

17 (g) a requirement that the youth receive counseling services;

18 (h) placement in a youth assessment center for up to 10 days;

19 (i) placement of the youth in detention for up to 3 days on a space-available basis at the county's  
20 expense, which is not reimbursable under part 19 of this chapter;

21 (j) a requirement that the youth perform community service;

22 (k) a requirement that the youth participate in victim-offender mediation;

23 ~~(l) an agreement that the youth pay a contribution covering all or a part of the costs for the~~  
24 ~~adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention,~~  
25 ~~supervision, care, custody, and treatment of the youth, including the costs of counseling;~~

26 ~~(m)~~(l) an agreement that the youth pay a contribution covering all or a part of the costs of a victim's  
27 ~~counseling or restitution for damages that result from the offense for which the youth is disposed;~~

28 ~~(n)~~(m) any other condition ordered by the court to accomplish the goals of the consent adjustment,

1 including but not limited to mediation or youth assessment. ~~Before ordering youth assessment, the court shall~~  
2 ~~provide the family with an estimate of the cost of youth assessment, and the court shall take into consideration~~  
3 ~~the financial resources of the family before ordering parental or guardian contribution for the costs of youth~~  
4 ~~assessment.~~

5 (2) ~~If the youth is placed in substitute care, an assessment placement, or detention requiring~~  
6 ~~payment by any state department or local government agency, the court shall examine the financial ability of~~  
7 ~~the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication,~~  
8 ~~disposition, supervision, care, placement, and treatment of the youth, including the costs of necessary medical,~~  
9 ~~dental, and other health care. Pursuant to [section 1], the youth, the youth's parents, or the youth's guardian~~  
10 may not be required to pay a contribution covering any fees, obligations, or costs as part of a consent  
11 adjustment."

12

13 **Section 9.** Section 41-5-1412, MCA, is amended to read:

14 **"41-5-1412. Rights and obligations -- persons to be advised -- contempt.** (1) A person afforded  
15 rights under this chapter must be advised of those rights and any other rights existing under law at the time of  
16 the person's first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other  
17 time specified in that act or other law.

18 (2) A person must be advised of obligations, including possible assessments ~~and related costs,~~  
19 ~~that may arise under this chapter, including the possibility that the person may be required to reimburse the~~  
20 ~~state or local governments for costs attributable to the adjudication, disposition, attorney fees for the costs of~~  
21 ~~prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth~~  
22 ~~and may be required to participate in counseling, treatment, or other support services.~~

23 (3) A youth's parents or guardians are obligated to assist and support the youth court in  
24 implementing the court's orders concerning a youth under youth court jurisdiction, and the parents or guardians  
25 are subject to the court's contempt powers if they fail to do so. The youth court personnel shall assist the  
26 parents to the extent possible in implementing and enforcing interventions and consequences designed to  
27 modify the youth's behavior.

28 (4) A parent has a right to review the results of a youth assessment and to place a rebuttal,

1 statement, or additional information in the youth's file in youth court."

2

3 **Section 10.** Section 41-5-1501, MCA, is amended to read:

4 **"41-5-1501. Consent decree with petition.** (1) (a) Subject to the provisions of subsection (2), after  
5 the filing of a petition under 41-5-1402 and before the entry of a judgment, the court may, on motion of counsel  
6 for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision  
7 under terms and conditions negotiated with probation services and agreed to by all necessary parties. The  
8 court's order continuing the youth under supervision under this section is known as a "consent decree". Except  
9 as provided in subsection (1)(b), the procedures used and dispositions permitted under this section must  
10 conform to the procedures and dispositions specified in 41-5-1302 through 41-5-1304 relating to consent  
11 adjustments without petition ~~and the responsibility of the youth's parents or guardians to pay a contribution for~~  
12 ~~the costs of placement in substitute care.~~

13 (b) A youth may be placed in detention for up to 10 days on a space-available basis at the county's  
14 expense, which is not reimbursable under part 19 of this chapter.

15 (2) A consent decree under this section may not be used by the court unless the youth admits guilt  
16 for a charge of an offense set forth in the petition and accepts responsibility for the youth's actions.

17 (3) If the youth or the youth's counsel objects to a consent decree, the court shall proceed to  
18 findings, adjudication, and disposition of the case.

19 (4) If, either prior to discharge by probation services or expiration of the consent decree, a new  
20 petition alleging that the youth is a delinquent youth or a youth in need of intervention is filed against the youth  
21 or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which  
22 the youth was continued under supervision may be reinstated in the discretion of the county attorney in  
23 consultation with probation services. In the event of reinstatement, the proceeding on the petition must be  
24 continued to conclusion as if the consent decree had never been entered.

25 (5) A youth who is discharged by probation services or who completes a period under supervision  
26 without reinstatement of the original petition may not again be proceeded against in any court for the same  
27 offense alleged in the petition, and the original petition must be dismissed with prejudice. This subsection does  
28 not preclude a civil suit against the youth for damages arising from the youth's conduct.

1 (6) If the terms of the consent decree extend for a period in excess of 6 months, the juvenile  
2 probation officer shall at the end of each 6-month period submit a report that must be reviewed by the court.

3 (7) A consent decree with petition under this section may not be used to dispose of a youth's  
4 alleged second or subsequent offense if that offense would be a felony if committed by an adult or third or  
5 subsequent offense if that offense would be a misdemeanor if committed by an adult unless it is recommended  
6 by the county attorney and accepted by the youth court judge."

7

8 **Section 11.** Section 41-5-1503, MCA, is amended to read:

9 **"41-5-1503. Medical or psychological evaluation of youth -- urinalysis.** (1) The youth court may  
10 order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth  
11 waives the youth's constitutional rights in the manner provided for in 41-5-331. ~~Except as provided in~~  
12 ~~subsection (2), the~~The youth court shall pay for the cost of the evaluation from its judicial district's allocation  
13 provided for in 41-5-130 or 41-5-2012.

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

17 ~~(3)(2)~~ Subject to 41-5-1512~~(1)(e)(i)(1)(m)(i)~~, the youth court may not order an evaluation or placement  
18 of a youth at a correctional facility unless the youth is found to be a delinquent youth or is alleged to have  
19 committed an offense that is listed in 41-5-206.

20 ~~(4)(3)~~ An evaluation of a youth may not be performed at the Montana state hospital.

21 ~~(5)(4)~~ In a proceeding alleging a youth to be a delinquent youth, upon a finding of an offense related  
22 to use of alcohol or illegal drugs, the court may order the youth to undergo urinalysis for the purpose of  
23 determining whether the youth is using alcoholic beverages or illegal drugs. The cost of testing may not be  
24 charged to the youth, the youth's parents, or the youth's guardians."

25

26 **Section 12.** Section 41-5-1511, MCA, is amended to read:

27 **"41-5-1511. Dispositional hearing -- contributions by parents or guardians for expenses.** (1) As  
28 soon as practicable after a youth is found to be a delinquent youth or a youth in need of intervention, the court



1 shall conduct a dispositional hearing. ~~The dispositional hearing may involve a determination of the financial~~  
2 ~~ability of the youth's parents or guardians to pay a contribution for the cost of the adjudication, disposition,~~  
3 ~~supervision, care, commitment, and treatment of the youth as required in 41-5-1525, including the costs of~~  
4 ~~necessary medical, dental, and other health care. The youth's parents or guardian may not be required to~~  
5 ~~contribute to the cost of adjudication, disposition, supervision, care, commitment, or treatment of the youth.~~

6 (2) Before conducting the dispositional hearing, the court shall direct that a youth assessment or  
7 predisposition report be made in writing by a juvenile probation officer or an assessment officer concerning the  
8 youth, the youth's family, the youth's environment, and other matters relevant to the need for care or  
9 rehabilitation or disposition of the case, including a statement by the victim or the victim's family. The youth  
10 court may have the youth examined, and the results of the examination must be made available to the court as  
11 part of the youth assessment or predisposition report. The court may order the examination of a parent or  
12 guardian whose ability to care for or supervise a youth is at issue before the court. The results of the  
13 examination must be included in the youth assessment or predisposition report. The youth or the youth's  
14 parents, guardian, or counsel has the right to subpoena all persons who have prepared any portion of the youth  
15 assessment or predisposition report and has the right to cross-examine the parties at the dispositional hearing.

16 (3) Defense counsel must be furnished with a copy of the youth assessment or predisposition  
17 report and psychological report prior to the dispositional hearing.

18 (4) The dispositional hearing must be conducted in the manner set forth in 41-5-1502(5) through  
19 (7). The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of  
20 the youth, the victim, and the public. The evidence must include but is not limited to the youth assessment and  
21 predisposition report provided for in subsection (2) of this section.

22 (5) If the court finds that it is in the best interest of the youth, the youth, the youth's parents or  
23 guardian, or the public may be temporarily excluded from the hearing during the taking of evidence on the  
24 issues of need for treatment and rehabilitation."  
25

26 **Section 13.** Section 41-5-1512, MCA, is amended to read:

27 **"41-5-1512. Disposition of youth in need of intervention or youth who violate consent**  
28 **adjustments.** (1) If a youth is found to be a youth in need of intervention or to have violated a consent

1 adjustment, the youth court may enter its judgment making one or more of the following dispositions:

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

4 (b) place the youth in a residence that ensures that the youth is accountable, that provides for  
5 rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider  
6 placement recommendations from the youth placement committee if a committee has been established as  
7 provided for in 41-5-121.

8 (c) commit the youth to the youth court for the purposes of placement in a private, out-of-home  
9 facility subject to the conditions in 41-5-1522. In an order committing a youth to the youth court, the court shall  
10 determine whether continuation in the youth's own home would be contrary to the welfare of the youth and  
11 whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the  
12 youth's home.

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

15 (e) require the performance of community service;

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

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

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

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

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

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

28 (l) order confiscation of the youth's driver's license, if the youth has one, by the juvenile probation

1 officer for a specified period of time, not to exceed 90 days. The juvenile probation officer shall notify the  
2 department of justice of the confiscation and its duration. The department of justice may not enter the  
3 confiscation on the youth's driving record. The juvenile probation officer shall notify the department of justice  
4 when the confiscated driver's license has been returned to the youth. A youth's driver's license may be  
5 confiscated under this subsection more than once. The juvenile probation officer may, in the juvenile probation  
6 officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's  
7 license before the termination of the time period for which it had been confiscated. The confiscation may not be  
8 used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle  
9 insurance covering the youth or a vehicle or vehicles driven by the youth and may not be used as grounds for  
10 denying coverage for an accident or other occurrence under an existing policy.

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

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

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

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

20 (ii) The placement for evaluation must be on a space-available basis. ~~Except as provided in~~  
21 ~~subsection (1)(o)(iii), the~~ The court shall pay the cost of the placement for evaluation from its judicial district's  
22 allocation provided for in 41-5-130 or 41-5-2012.

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

27 ~~(p)~~(n) order placement of a youth in a youth assessment center for up to 10 days; or

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

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

4 (3) The court may not order a state government entity to pay for care, treatment, intervention,  
5 placement, or evaluation that results in a deficit in the annual allocation established for that district under 41-5-  
6 130 without approval from the office of court administrator.

7 (4) Pursuant to [section 1], the youth, the youth's parents, or the youth's guardian may not be  
8 required to pay a contribution covering any fees, obligations, or costs as part of a disposition under this  
9 section."

10

11 **Section 14.** Section 41-5-1513, MCA, is amended to read:

12 **"41-5-1513. Disposition -- delinquent youth -- restrictions.** (1) If a youth is found to be a delinquent  
13 youth, the youth court may enter its judgment making one or more of the following dispositions:

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

15 (b) subject to 41-5-1504, 41-5-1512(1)(e)(i)(1)(m)(i), and 41-5-1522, commit the youth to the  
16 department for placement in a correctional facility or other appropriate program as determined by the  
17 department and recommend to the department that the youth not be released until the youth reaches 18 years  
18 of age. The court may not place a youth adjudicated to be a delinquent youth in a correctional facility for an act  
19 that would be a misdemeanor if committed by an adult unless:

20 (i) the youth committed four or more misdemeanors in the prior 12 months;

21 (ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional  
22 counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a  
23 correctional facility; and

24 (iii) the court finds that the youth will present a danger to the public if the youth is not placed in a  
25 correctional facility.

26 (c) subject to the provisions of subsection (6), require a youth found to be a delinquent youth, as  
27 the result of the commission of an offense that would be a violent offense, as defined in 46-23-502, if committed  
28 by an adult, to register and remain registered as a violent offender pursuant to Title 46, chapter 23, part 5. The

1 youth court shall retain jurisdiction in a disposition under this subsection to ensure registration compliance.

2 (d) in the case of a delinquent youth who has been adjudicated for a sexual offense, as defined in  
3 46-23-502, the youth is exempt from the duty to register as a sexual offender pursuant to Title 46, chapter 23,  
4 part 5, unless the court finds that:

5 (i) the youth has previously been found to have committed or been adjudicated for a sexual  
6 offense, as defined in 46-23-502; or

7 (ii) registration is necessary for protection of the public and that registration is in the public's best  
8 interest;

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

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

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

19 (a) prior to disposition, order a psychosexual evaluation that must comply with the provisions of 46-  
20 18-111;

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

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

23 (d) for a youth designated under this section and 46-23-509 as a level 3 offender, impose on the  
24 youth those restrictions required for adult offenders by 46-18-255(2) unless the youth is approved by the youth  
25 court or the department for placement in a home, program, or facility for delinquent youth. Restrictions imposed  
26 pursuant to this subsection (2)(d) terminate when the jurisdiction of the youth court terminates pursuant to 41-5-  
27 205 unless those restrictions are terminated sooner by an order of the court. However, if a youth's case is  
28 transferred to district court pursuant to 41-5-203, 41-5-206, 41-5-208, or 41-5-1605, any remaining part of the

1 restriction imposed pursuant to this subsection (2)(d) is transferred to the jurisdiction of the district court and the  
2 supervision of the offender is transferred to the department.

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

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

12 (5) The court may not order a state government entity to pay for care, treatment, intervention,  
13 placement, or evaluation that results in a deficit in the annual allocation established for that district under 41-5-  
14 130 without approval from the office of court administrator.

15 (6) The duration of registration for a youth who is required to register as a sexual or violent  
16 offender must be as provided in 46-23-506, except that the court may, based on specific findings of fact, order a  
17 lesser duration of registration."  
18

19 **Section 15.** Section 41-5-1703, MCA, is amended to read:

20 **"41-5-1703. Powers and duties of juvenile probation officers.** (1) A juvenile probation officer shall:

- 21 (a) perform the duties set out in 41-5-1302;
- 22 (b) make predisposition studies and submit reports and recommendations to the court;
- 23 (c) supervise, assist, and counsel youth placed on probation or conditional release or under the  
24 juvenile probation officer's supervision, including enforcement of the terms of probation or conditional release or  
25 intervention;

26 (d) assist any public and private community and work projects engaged in by youth to pay ~~fees,~~  
27 ~~make restitution, and pay any other costs ordered by the court that are associated with youth delinquency or~~  
28 ~~need for intervention;~~

1 (e) perform any other functions designated by the court.

2 (2) A juvenile probation officer does not have power to make arrests or to perform any other law  
3 enforcement functions in carrying out the juvenile probation officer's duties except that a juvenile probation  
4 officer may take into custody any youth who violates either the youth's probation, terms and conditions of the  
5 youth's conditional release agreement, or a lawful order of the court.

6 (3) The duties of a full-time or part-time juvenile probation officer may not be performed by a  
7 person serving as a law enforcement officer."

8  
9 **NEW SECTION. Section 16. Repealer.** The following sections of the Montana Code Annotated are  
10 repealed:

11 41-5-112. Parental contributions account -- allocation of proceeds.

12 41-5-1525. Contribution for costs -- order for contribution -- exceptions -- collection.

13  
14 **NEW SECTION. Section 17. Codification instruction.** [Section 1] is intended to be codified as an  
15 integral part of Title 41, chapter 5, part 1, and the provisions of Title 41, chapter 5, part 1, apply to [section 1].

16 - END -