

SENATE BILL NO. 386
INTRODUCED BY M. WATERMAN

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING THE INTERVENTION IN DELINQUENCY PILOT PROGRAM PERMANENT; MAKING PARTICIPATION BY JUDICIAL DISTRICTS IN THE PROGRAM DISCRETIONARY; CHANGING THE MEMBERSHIP OF YOUTH PLACEMENT COMMITTEES; REQUIRING THE DEPARTMENT OF CORRECTIONS TO CREATE ACCOUNTS FOR JUDICIAL DISTRICTS ~~AT A JUDICIAL DISTRICT'S REQUEST~~; AMENDING SECTION 1, CHAPTER 161, LAWS OF 1999; REPEALING SECTION 2, CHAPTER 161, LAWS OF 1999, AND SECTION 82, CHAPTER 550, LAWS OF 1997 SECTIONS 41-5-103, 41-5-121, 41-5-122, 41-5-123, 41-5-124, 41-5-205, 41-5-1503, 41-5-1512, 41-5-1513, AND 52-5-109, MCA; AND PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE DATE."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

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

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

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

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

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

(4) "Commit" means to transfer to legal custody.

(5) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

(6) "Cost containment funds" means funds retained by the department under [section 20] for distribution by the cost containment review panel.

(7) "Cost containment review panel" means the panel established in [section 17].

~~(6)~~(8) "Court", when used without further qualification, means the youth court of the district court.

~~(7)~~(9) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.

~~(8)~~(10) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

~~(9)~~(11) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

- (a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or
- (b) who has been placed on probation as a delinquent youth or a youth in need of intervention and who has violated any condition of probation.

~~(10)~~(12) "Department" means the department of corrections provided for in 2-15-2301.

~~(11)~~(13) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed to the department under 41-5-1512~~(3)~~(1)(c) or 41-5-1513(1)(b) or (1)(c) or who are under parole supervision. Department records do not include information provided by the department to the department of public health and human services' management information system.

~~(12)~~(14) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

- (a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;
- (b) contempt of court or violation of a valid court order; or
- (c) violation of a youth parole agreement.

~~(13)~~(15) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

~~(14)~~(16) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

~~(15)~~(17) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

~~(16)~~(18) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

~~(17)~~(19) "Guardian" means an adult:

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

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

~~(18)~~(20) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

~~(19)~~(21) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

~~(20)~~(22) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a colocated juvenile detention facility that complies with 28 CFR, part 31.

~~(21)~~(23) "Judge", when used without further qualification, means the judge of the youth court.

~~(22)~~(24) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

~~(23)~~(25) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

~~(24)~~(26) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

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

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

~~(25)~~(27) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

~~(28)~~ "Out-of-home placement" means placement of a youth in a program, facility, or home, other than a custodial parent's home, for purposes other than preadjudicatory detention. The term does not include shelter care or emergency placement of less than 45 days.

~~(26)~~(29) "Parent" means the natural or adoptive parent but does not include a person whose parental

rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

~~(27)~~(30) "Probable cause hearing" means the hearing provided for in 41-5-332.

~~(28)~~(31) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

~~(29)~~(32) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

~~(30)~~(33) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

~~(31)~~(34) "Secure detention facility" means a public or private facility that:

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

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

~~(32)~~(35) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

~~(33)~~(36) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

~~(34)~~(37) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-344.

~~(35)~~(38) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

~~(36)~~(39) "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills youth correctional facility in Miles City.

~~(37)~~(40) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

~~(38)~~(41) "Victim" means:

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

(b) an adult relative of the victim, as defined in subsection ~~(38)(a)~~(41)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

~~(39)~~(42) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

~~(40)~~(43) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1201.

~~(41)~~(44) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

~~(42)~~(45) "Youth care facility" has the meaning provided in 41-3-1102.

~~(43)~~(46) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of intervention, or a youth in need of care and includes the youth court judge, probation officers, and assessment officers.

~~(44)~~(47) "Youth court records" means information or data, either in written or electronic form, maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, youth assessment materials, predispositional studies, and supervision records of probationers. Youth court records do not include information provided by the youth court to the department of public health and human services' management information system.

~~(45)~~(48) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

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

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

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

~~(46)~~(49) "Youth in need of care" has the meaning provided for in 41-3-102.

~~(47)~~(50) "Youth in need of intervention" means a youth who is adjudicated as a youth and who commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

- (a) violates any Montana municipal or state law regarding alcoholic beverages;
- (b) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or
- (c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 2. Section 41-5-121, MCA, is amended to read:

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

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

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

(b) ~~Members may~~ The committee must include:

- ~~(a)~~(i) ~~two representatives of a juvenile parole officer employed by the department;~~
- ~~(b)~~(ii) a representative of the department of public health and human services;
- ~~(c)~~(iii) ~~either the chief probation officer or the youth's probation officer~~ or the chief probation officer's designee, who is the presiding officer of the committee;
- ~~(d)~~(iv) a mental health professional; and
- (v) if an Indian youth is involved, a person, preferably an Indian, knowledgeable about Indian culture and Indian family matters.

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

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

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

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

(h)(iii) a youth services provider; and

(iv) the youth's probation officer.

(3) Committee members serve without compensation.

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

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

(6) The department may not disburse funds from the budget allocation accounts established pursuant to [section 11] unless the youth court has established a youth placement committee as provided in this section."

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

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

(1) review all information relevant to the placement of a youth ~~referred or committed to the department~~;

(2) consider available resources appropriate to meet the needs of the youth;

(3) consider the treatment recommendations of any professional person who has evaluated the youth;

(4) consider options for the financial support of the youth;

(5) recommend in writing to the youth court judge or the department an appropriate placement for the youth, considering the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate for placement. A committee shall consider placement in a licensed facility, at a state youth correctional facility, or with a parent, other family member, or guardian.

(6) review temporary and emergency placements as required under 41-5-124; and

(7) conduct placement reviews at least ~~semiannually~~ every 6 months and at other times as requested by the youth court ~~department~~."

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

"41-5-123. Youth Judicial districts not participating in juvenile delinquency intervention program -- youth placement committee to submit recommendation to department -- acceptance or rejection of

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

(2) If the department accepts either of the committee's recommendations, it shall promptly notify the committee in writing.

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

(4) Within 72 hours after making a decision on a placement or change of placement, the department shall notify the youth court of the decision and of the placement or change of placement.

(5) This section applies only in judicial districts that do not participate in the juvenile delinquency intervention program administered by the department under [section 14]."

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

"41-5-124. Temporary and emergency placements -- limit. (1) A temporary placement of a youth in a shelter care facility or an emergency placement of a youth in a youth care facility is exempt from the requirements of 41-5-123.

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

Section 6. Section 41-5-205, MCA, is amended to read:

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

(2) Court jurisdiction terminates when:

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

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

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

transferred to the district court under 41-5-1605.

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

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

Section 7. Section 41-5-1503, MCA, is amended to read:

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

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

(3) Subject to 41-5-1512~~(15)(a)(1)(o)(i)~~, the youth court may not order an evaluation or placement of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is listed under 41-5-206.

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

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

Section 8. Section 41-5-1512, MCA, is amended to read:

"41-5-1512. Disposition of youth in need of intervention or youth who violate consent adjustments. (1) If a youth is found to be a youth in need of intervention or to have violated a consent adjustment, the youth court may enter its judgment making one or more of the following dispositions:

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

~~(2)(b)~~ place the youth in a residence that ensures that the youth is accountable, that provides for rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee. ~~The judge may not place the youth in a residence unless the department informs the judge that resources are available for placement of the youth at that residence.~~

~~(3)(c)~~ commit the youth to the department in jurisdictions that do not participate in the juvenile delinquency intervention program or to the youth court in jurisdictions that participate in the juvenile delinquency intervention program for the purposes of funding a private, out-of-home, residential placement subject to the conditions in 41-5-1522. In an order committing a youth to the department or to the youth court, the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home.

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

~~(5)(e)~~ require the performance of community service;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under [section 11] without approval from the cost containment review panel."

Section 9. Section 41-5-1513, MCA, is amended to read:

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

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

(b) subject to 41-5-1504, 41-5-1512~~(15)(a)(1)(o)(i)~~, and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The court may not place a youth adjudicated delinquent in a state youth correctional facility for an offense that would be a misdemeanor if committed by an adult unless the court finds that the youth presents a danger to the public safety and that the placement is recommended by a mental health professional after evaluation of the youth. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b).

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

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

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

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

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

youth.

(4) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under [section 11] without approval from the cost containment review panel."

Section 10. Section 52-5-109, MCA, is amended to read:

"52-5-109. Commitment expenses -- transportation costs -- arrangement for transportation. ~~The expenses of committing a youth to the Pine Hills youth correctional facility or the department of corrections and transporting the youth to the Pine Hills youth correctional facility or the place designated by the department for it to receive custody, as well as the expense of returning the youth to the county of residence, must be borne by the county of residence. The district judge shall arrange for transportation of the youth to the place where the department has directed that it will receive custody of the youth.~~

(1) The expenses of committing a youth to the department or to the youth court must be borne by the committing county.

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

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

(ii) in a jurisdiction that participates in the juvenile delinquency intervention program, the youth court shall pay the costs from the account established under [section 11] or out of county funds of the committing county.

(b) After adjudication, the costs of transporting a youth to and from an out-of-home placement in another state must be paid by the youth court and must be paid for out of the account established under [section 11], except that the department shall pay transportation costs in a case in which a youth is placed in an out-of-state correctional facility pursuant to 41-5-355.

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

NEW SECTION. Section 11. Participating and nonparticipating jurisdictions. (1) Each judicial district may elect to participate in the juvenile delinquency intervention program.

(2) A jurisdiction that elects to participate in the program may expend funds from a juvenile placement fund for out-of-home placements or for other services intended to reduce or prevent juvenile delinquency subject

to restrictions in this chapter and administrative rules adopted by the department.

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

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

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

(6) The department shall establish an account for each judicial district in order to administer a juvenile placement fund as appropriated by the legislature. The accounts must be used by the youth courts for funding out-of-home placements.

NEW SECTION. Section 12. Short title. [Sections 12 through 16 and 18] may be cited as the "Juvenile Delinquency Intervention Act".

NEW SECTION. Section 13. Purpose. The purposes of [sections 12 through 16 and 18] are to:

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

NEW SECTION. Section 14. Establishment of program -- department duties. (1) (a) There is a juvenile delinquency intervention program.

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

(2) The department and the youth court shall monitor the youth court's account created under [section 11] to ensure that the youth court does not exceed its allocated account budget.

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

(4) The department shall provide technical assistance to each youth court for the monitoring of account

funds and the evaluation and development of placement alternatives and effective intervention programming.

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

NEW SECTION. Section 15. Youth court duties. Each youth court shall:

- (1) use available resources to develop alternatives for the placement of youth;
- (2) use available resources for early intervention strategies for troubled youth;
- (3) use a risk assessment instrument approved by the department for the measurement of risk assessment and effectiveness of treatment or intervention for youth adjudicated pursuant to 41-5-1512 or 41-5-1513;
- (4) submit quarterly reports to the department documenting the use of diversionary and prevention programs and the use of placement services;
- (5) participate in the cost containment review panel established under [section 17]; and
- (6) provide the department and the legislative auditor with access to all records maintained by the youth court.

NEW SECTION. Section 16. Judicial districts participating in juvenile delinquency intervention program -- youth placement committee to submit recommendation to department -- acceptance or rejection of recommendation by department. (1) Prior to commitment of a youth to the custody of the youth court or to the department pursuant to 41-5-1512 or 41-5-1513, a youth placement committee must be convened. The committee shall submit in writing to the youth court judge its primary and alternative recommendations for placement of the youth.

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

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

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

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

(6) The youth court may not order a placement or change of placement that results in a deficit in the account established for that district under [section 11] without approval from the cost containment review panel.

(7) The youth court shall evaluate the cost of the placement or change of placement and ensure that the placement or change of placement will not overspend the budget allocation provided by the department under [section 11].

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

NEW SECTION. Section 17. Cost containment review panel. (1) The department shall establish a cost containment review panel.

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

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

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

(4) The cost containment review panel shall determine the distribution of funds allocated in [section 20].

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

(6) A youth court shall request funds from the cost containment review panel prior to exceeding its account allocation under [section 11]. If a panel member referred to in subsections (2)(d) through (2)(g) is a resident of or is employed in the judicial district of a youth court requesting cost containment funds, the panel member may not serve as a panel member for purposes of a decision regarding disbursement of cost containment funds to the youth court and an alternate panel member must be appointed by the department for

purposes of the decision.

NEW SECTION. Section 18. Rulemaking authority. (1) The department shall adopt rules necessary for the implementation of [sections 11 through 18 and 20], including but not limited to:

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

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

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

(d) determining the allocation of funds to the accounts for the youth courts;

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

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

(g) distributing cost containment funds to youth courts;

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

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

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

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

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

NEW SECTION. Section 19. Allocation of first-year funding. The department of corrections shall use data gathered during the administration of the intervention in delinquency pilot program established under section 73, Chapter 550, Laws of 1997, to assist in determining the allocations to the accounts created under [section 11] during the first year of operation of the juvenile delinquency intervention program established by [section 14].

NEW SECTION. Section 20. Cost containment fund -- allocation of appropriated funds -- use of funds. (1) The department of corrections shall establish a cost containment fund for the purposes of [section 17] and shall allocate to the fund not less than \$1 million each fiscal year from the funds appropriated for the juvenile placement budget for the fiscal biennium beginning July 1, 2001, to be used for the purposes of [section

17].

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

NEW SECTION. **Section 21. Program progress and report.** The department of corrections shall develop a system of outcome measures during the first 6 months of the operation of the program established in [section 14], use the system to evaluate the progress of the program, and report to the legislature in the manner provided in 5-11-210.

NEW SECTION. **Section 22. Codification instruction.** (1) [Sections 11, 17, and 20] are intended to be codified as an integral part of Title 41, chapter 5, part 1, and the provisions of Title 41, chapter 5, part 1, apply to [sections 11, 17, and 20].

(2) [Sections 12 through 16 and 18] are intended to be codified as a new part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to [sections 12 through 16 and 18].

NEW SECTION. **Section 23. Coordination instruction.** IF HOUSE BILL NO. 30 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN HOUSE BILL NO. 30 IS VOID.

NEW SECTION. **Section 24. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 25. Effective date.** [This act] is effective July 1, 2001.

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