



AN ACT GENERALLY REVISING YOUTH COURT LAWS CONCERNING JUVENILE PLACEMENT AND PAROLE SUPERVISION; TRANSFERRING JUVENILE PAROLE SUPERVISION FROM THE DEPARTMENT OF CORRECTIONS TO THE YOUTH COURT; PROVIDING FOR CONDITIONAL RELEASE IN PLACE OF PAROLE SUPERVISION AND DEFINING THE TERM "CONDITIONAL RELEASE"; PROVIDING THAT THE ESTABLISHMENT OF A YOUTH PLACEMENT COMMITTEE IS PERMISSIVE RATHER THAN MANDATORY; PROVIDING A PROCEDURE WITHIN THE YOUTH COURT FOR CONDUCTING A CONDITIONAL RELEASE REVOCATION HEARING; PROVIDING FOR AN APPROPRIATION; AMENDING SECTIONS 10-1-1402, 20-9-327, 41-5-103, 41-5-121, 41-5-124, 41-5-125, 41-5-130, 41-5-131, 41-5-132, 41-5-215, 41-5-332, 41-5-341, 41-5-1304, 41-5-1432, 41-5-1512, 41-5-1513, 41-5-1522, 41-5-1523, 41-5-1524, 41-5-1604, 41-5-1703, 41-5-2005, 45-5-501, 45-5-502, 46-23-102, 52-5-102, 52-5-103, 52-5-109, 52-5-126, 52-5-127, 52-5-128, AND 53-1-203, MCA; REPEALING SECTION 52-5-129, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Conditional release revocation hearing. (1) (a) If a county attorney files a petition to revoke a youth's conditional release, the court shall hold a revocation hearing without a jury within 10 working days after the petition is filed, except as provided in subsection (1)(b).

(b) If a youth alleged to have violated the terms and conditions of the youth's conditional release agreement has been taken into custody and placed in detention, the court shall conduct a probable cause hearing in accordance with 41-5-332 through 41-5-334.

(i) If the court determines that there is probable cause to believe that the youth has violated the terms and conditions of the youth's conditional release agreement and the county attorney determines that revocation is warranted, the county attorney shall file a petition to revoke within 7 working days. The court shall hold a revocation hearing without a jury within 10 working days after the petition has been filed.

(ii) If the county attorney does not file a petition to revoke, the youth must be released unless good cause

is shown to further detain the youth.

(2) In regard to the conditional release revocation hearing, the youth is entitled to:

(a) receive written notice of the alleged violation of the terms and conditions of the youth's conditional release;

(b) receive evidence of the alleged violation;

(c) an opportunity to be heard in person or by interactive video transmission and to present witnesses and evidence;

(d) cross-examine witnesses, unless the court finds good cause for not allowing confrontation; and

(e) be represented by counsel.

(3) After the revocation hearing, if the court finds by a preponderance of the evidence presented that the youth has violated the terms and conditions of the youth's conditional release, the court may revoke the youth's conditional release and return the youth to a state youth correctional facility or make any other judgment or disposition that could have been made under the original judgment.

Section 2. Section 10-1-1402, MCA, is amended to read:

"10-1-1402. Legislative intent. It is the intent of the legislature that:

(1) the youth challenge program assist youth between 16 and 18 years of age to achieve a quality education and develop the skills and abilities necessary to become productive citizens;

(2) the youth challenge program focus on the physical, emotional, and educational needs of youth within a voluntary, highly structured environment;

(3) eligible participants be drug-free, not be on ~~parole~~ conditional release or probation for other than juvenile-status offenses, not have been indicted for or charged with an offense other than a juvenile-status offense, and not have been convicted of a felony or capital offense;

(4) recruiting for the youth challenge program treat all eligible youth equitably and seek representation from different genders, ethnic groups, and geographic locations;

(5) the youth challenge program conduct structured training consisting of a residential phase and a postresidential phase with curriculum that focuses on academic excellence, including the successful completion of the tests for a high school equivalency diploma, and on physical fitness, job skills, service to the community, health and hygiene, responsible citizenship, leadership, how to follow directions, and life-coping skills; and

(6) the youth challenge program be conducted in cooperation with other community programs for at-risk youth."

Section 3. Section 20-9-327, MCA, is amended to read:

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

- (i) public school districts, as defined in 20-6-101 and 20-6-701;
- (ii) special education cooperatives, as described in 20-7-451;
- (iii) the Montana school for the deaf and blind, as described in 20-8-101;
- (iv) state youth correctional facilities, as defined in 41-5-103; and
- (v) the Montana youth challenge program.

(b) A special education cooperative that has not met the requirements of 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction.

(2) (a) The quality educator payment for special education cooperatives must be distributed directly to those entities by the superintendent of public instruction.

(b) The quality educator payment for the Montana school for the deaf and blind must be distributed to the Montana school for the deaf and blind.

(c) The quality educator payment for Pine Hills ~~and Riverside youth correctional facilities~~ youth correctional facility and the facility under contract with the department of corrections for female youth must be distributed to those facilities by the department of corrections.

(d) The quality educator payment for the Montana youth challenge program must be distributed to that program by the department of military affairs.

(3) The quality educator payment is calculated as provided in 20-9-306, using the number of full-time equivalent educators, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, each of whom:

(a) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (1) of this section in a position that requires an educator license in accordance with the administrative rules adopted by the board of public education;

(b) (i) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-17-302, 37-22-301, 37-23-201, 37-24-301, or 37-25-302; and

- (ii) is employed by an entity listed in subsection (1) to provide services to students; or
- (c) (i) holds an American Indian language and culture specialist license; and
- (ii) is employed by an entity listed in subsection (1) to provide services to students in an Indian language immersion program pursuant to Title 20, chapter 7, part 14. (Subsection (3)(c) terminates June 30, 2019--sec. 10, Ch. 442, L. 2015.)"

Section 4. 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 legal custody of a youth to the department or to the youth court.
- (5) "Conditional release" means the release of a youth from a state youth correctional facility subject to the terms and conditions of the conditional release agreement provided for in 52-5-126.
- ~~(5)~~(6) "Correctional facility" means a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.
- ~~(6)~~(7) "Cost containment pool" means an account from which funds are allocated by the office of court administrator under 41-5-132 to a judicial district that exceeds its annual allocation for juvenile out-of-home placements, programs, and services or to the department for costs incurred under 41-5-1504.
- ~~(7)~~(8) "Cost containment review panel" means the panel established in 41-5-131.
- ~~(8)~~(9) "Court", when used without further qualification, means the youth court of the district court.
- ~~(9)~~(10) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.
- ~~(10)~~(11) (a) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given.

- (b) The term does not include a person who has only physical custody.

~~(11)~~(12) "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 and who has violated any condition of probation; or

(c) who has violated the terms and conditions of the youth's conditional release agreement.

~~(12)~~(13) "Department" means the department of corrections provided for in 2-15-2301.

~~(13)~~(14) (a) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under 41-5-1513(1)(b) ~~or who are under parole supervision.~~

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

~~(14)~~(15) "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~~ the terms and conditions of the youth's conditional release agreement.

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

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

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

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

~~(19)~~(20) (a) "Formal youth court records" means information or data, either in written or electronic form, on file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional studies.

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

~~(20)~~(21) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

~~(21)~~(22) "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.

~~(22)~~(23) "Habitual truancy" means recorded unexcused absences of 9 or more days or 54 or more parts 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 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.

(b) The term does not include a jail.

~~(24)~~(25) (a) "Informal youth court records" means information or data, either in written or electronic form, maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and supervision records of probationers.

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

~~(25)~~(26) (a) "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.

(b) The term does not include a ~~collocated~~ collocated juvenile detention facility that complies with 28

CFR, part 31.

~~(26)~~(27) "Judge", when used without further qualification, means the judge of the youth court.

~~(27)~~(28) "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.

~~(28)~~(29) "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.

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

~~(30)~~(31) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

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

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

~~(32)~~(33) (a) "Parent" means the natural or adoptive parent.

(b) The term does not include:

- (i) a person whose parental rights have been judicially terminated; or
- (ii) 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.

~~(33)~~(34) "Probable cause hearing" means the hearing provided for in 41-5-332.

~~(34)~~(35) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

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

~~(36)~~(37) "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.

~~(37)~~(38) "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~~ the terms and conditions of the youth's conditional release 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.

~~(38)~~(39) "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.

~~(39)~~(40) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

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

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

~~(42)~~(43) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or the ~~Riverside youth correctional facility in Boulder~~ correctional facility under contract with the department for female youth.

~~(43)~~(44) "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.

~~(44)~~(45) "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 ~~(44)(a)~~ (45)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

~~(45)~~(46) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

~~(46)~~(47) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1203.

~~(47)~~(48) "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.

~~(48)~~(49) "Youth care facility" has the meaning provided in 52-2-602.

~~(49)~~(50) "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, or a youth in need of intervention, or a youth alleged to have violated the terms and conditions of the youth's conditional release agreement and includes the youth court judge, juvenile probation officers, and assessment officers.

~~(50)~~(51) "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 ~~colocated~~ 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~~ the terms and conditions of the youth's conditional release agreement, or violation of a valid court order.

~~(51)~~(52) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

- (a) 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:
 - (i) violates any Montana municipal or state law regarding alcoholic beverages; or
 - (ii) 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
- (b) 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 5. Section 41-5-121, MCA, is amended to read:

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

(a) recommending an appropriate placement of a youth committed to the youth court under 41-5-1512 or 41-5-1513 or committed to the department under 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 legal custody of the youth court under 41-5-1512 or 41-5-1513 or a youth on conditional release ~~the department under 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 or the placement of a youth on parole under the department's jurisdiction.~~

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

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

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

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

(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-;

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

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

~~(ii)(vii)~~ (vii) the youth's parent or guardian;

~~(iii)(viii)~~ (viii) a youth services provider; and

~~(iv)(ix)~~ (ix) the youth's juvenile probation officer.

(3) The ~~youth court judge~~ chief juvenile probation officer shall appoint all members of the youth

placement committee ~~except the juvenile parole officer. The director of the department shall appoint the juvenile parole officer and shall, when making the appointment, take into consideration:~~

- ~~—— (a) the juvenile parole officer's qualifications;~~
- ~~—— (b) the costs involved in the juvenile parole officer's attendance at youth placement committee meetings;~~
- and
- ~~—— (c) the location of the juvenile parole officer's home in relation to the location of the youth placement committee.~~

(4) Committee members serve without compensation.

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

(6) 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~~ chief juvenile probation officer shall inform the school district of the final placement decision for the youth.

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

Section 6. Section 41-5-124, MCA, is amended to read:

"41-5-124. Temporary and emergency placements -- limit. A temporary placement of a youth in a shelter care facility for less than 45 days or an emergency placement of a youth in a youth care facility is exempt from review by the appropriate youth placement committee. If a temporary or emergency placement of a youth continues for 45 or more days, the youth court shall refer the placement of the youth to the appropriate youth placement committee for review if a committee has been established as provided for in 41-5-121. The committee shall make a recommendation for placement to the youth court."

Section 7. Section 41-5-125, MCA, is amended to read:

"41-5-125. Confidentiality of youth placement committee meetings and records. (1) Meetings of a youth placement committee are closed to the public to protect a youth's right to individual privacy.

(2) Information presented to the committee about a youth and committee records are confidential and

subject to confidentiality requirements established by ~~rule by the department~~ the court."

Section 8. Section 41-5-130, MCA, is amended to read:

"41-5-130. Office of court administrator to administer juvenile placement funds -- allocations -- deposit of unexpended funds. (1) The office of court administrator shall administer juvenile placement funds appropriated to the judicial branch by the legislature in accordance with this chapter.

~~(2) For each fiscal year, the department shall administer appropriated juvenile placement funds for juvenile parole out-of-home placements, programs, and services.~~

~~(3)~~(2) For each fiscal year, the office of court administrator shall allocate funds to the cost containment pool under 41-5-132 and allocate the remaining appropriated juvenile placement funds to each judicial district according to a formula recommended by the cost containment review panel provided for in 41-5-131 and adopted by the office of court administrator.

~~(4)~~(3) A judicial district may expend funds from its annual allocation for out-of-home placements or for other programs or services intended to reduce or prevent juvenile delinquency subject to the provisions of subsection ~~(5)~~ (4).

~~(5)~~(4) (a) Except as provided in subsection ~~(5)(b)~~ (4)(b), a judicial district shall reserve at least 50% of its annual allocation for out-of-home placements and the remainder for programs or services.

(b) A judicial district may reserve more than 50% of its annual allocation for programs or services if:

(i) the programs or services have, based on demonstrated outcomes, reduced the number of placements in correctional facilities or higher-cost residential placements; and

(ii) the judicial district would not require funding from the cost containment pool, provided for in 41-5-132, in the same fiscal year in which the annual allocation is made under this subsection ~~(5)(b)~~ (4)(b).

~~(6)~~(5) At the end of each fiscal year, after all valid obligations have been paid or encumbered for payment, the office of court administrator shall deposit any unexpended funds from the judicial districts' annual allocations provided for in this section into the youth court intervention and prevention account provided for in 41-5-2011."

Section 9. Section 41-5-131, MCA, is amended to read:

"41-5-131. Cost containment review panel -- duties. (1) The supreme court shall establish a cost

containment review panel to advise the office of court administrator in administering the cost containment pool and youth court intervention and prevention account.

(2) (a) The members of the cost containment review panel must be appointed as follows:

~~(i) three members appointed by the director of the department;~~

~~(ii) three~~ four members appointed by the chief justice of the supreme court; and

~~(iii) one~~ one member who is a professional working in the field of children's mental health appointed by the director of the department of public health and human services.

(b) Each appointing authority under subsection (2)(a) shall appoint one person to serve as the alternate for a member appointed by the authority who is unable to participate in a cost containment review panel meeting.

(3) Recommendations of the cost containment review panel must be made by majority vote of the members of the cost containment review panel or their alternates.

(4) The cost containment review panel shall:

(a) recommend a formula for the annual allocation to each judicial district as provided in 41-5-130;

(b) recommend an amount to be allocated to the cost containment pool as provided in 41-5-132;

(c) review requests by judicial districts for allocations from the cost containment pool and recommend to the office of court administrator whether each request should be approved as provided in 41-5-132;

(d) approve requests by the department for reimbursement from the cost containment pool as provided in 41-5-132;

(e) provide recommendations to the department regarding placement for youth as provided in 41-5-1504;

(f) provide recommendations on the evaluation of out-of-home placements, programs, and services as provided in 41-5-2003; and

(g) review plans submitted under 41-5-2012 and recommend to the office of court administrator whether each plan should be approved."

Section 10. Section 41-5-132, MCA, is amended to read:

"41-5-132. Cost containment pool -- allocation of appropriated funds -- allocation from pool -- deposit of unexpended funds. (1) (a) The office of court administrator shall establish a cost containment pool. After considering the cost containment review panel's recommendation as provided for in subsection (1)(b), the office of court administrator shall allocate to the cost containment pool at the beginning of each fiscal year not

less than \$1 million from the funds appropriated for juvenile placements.

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

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

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

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

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

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

(b) conduct an evaluation of out-of-home placements, programs, and services as provided in 41-5-2003.

The office of court administrator may not expend more than \$50,000 each year from the cost containment pool

to conduct the evaluation.

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

Section 11. Section 41-5-215, MCA, is amended to read:

"41-5-215. Youth court and department records -- notification of school. (1) Formal youth court records, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court, are public records and are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

- (a) the youth court and its professional staff;
- (b) representatives of any agency providing supervision and having legal custody of a youth;
- (c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;
- (d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;
- (e) the county attorney;
- (f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;
- (g) a member of a county interdisciplinary child information and school safety team formed under 52-2-211 who is not listed in this subsection (2);
- (h) members of a local interagency staffing group provided for in 52-2-203;
- (i) persons allowed access under 42-3-203; ~~and~~
- (j) persons conducting evaluations as required in 41-5-2003; and
- (k) the attorney, guardian ad litem, or child advocate for the youth who is the subject of the report or record.

(3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e), subject to the provisions of subsection (3)(b) of this section, and according to the guidelines in subsection (3)(f) of this section, the chief probation officer or other designee from the district that has jurisdiction over the matter ~~or the department of~~

~~corrections for youth under the supervision of the department~~ shall notify the school district that the youth presently attends or the school district that the youth has applied to attend of a youth's past or current drug use or criminal activity if after an investigation has been completed:

(i) a petition has been filed with the youth court or charges are filed in district court alleging a violation of any section in Title 45, chapter 5; or

(ii) the youth has admitted the allegation and the acts involve any offense in which another youth was an alleged victim and the admitted activity has a bearing on the safety of children.

(b) Notification under subsection (3)(a) may not be given for status offenses.

(c) Notification under subsection (3)(a) terminates upon the end of the youth court's supervision ~~or the discharge of the youth by the department of corrections.~~

(d) A school district may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

(e) The administrative officials of the school district may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

(f) Notification to the school district under subsection (3)(a) must be provided to:

(i) the school district superintendent or the superintendent's designee in districts that employ a superintendent;

(ii) the building principal or the principal's designee in school districts where the building principal is the only administrator; or

(iii) the county superintendent in school districts that do not employ an administrator.

(4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

(5) The school district may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving the information shall certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian of the pupil.

(6) Any part of records information secured from records listed in subsection (2), when presented to and

used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings."

Section 12. Section 41-5-332, MCA, is amended to read:

"41-5-332. Custody -- hearing for probable cause. (1) When a youth is taken into custody for questioning, a hearing to determine whether there is probable cause to believe the youth is a delinquent youth or a youth in need of intervention must be held within 24 hours, excluding weekends and legal holidays. A hearing is not required if the youth is released prior to the time of the required hearing.

(2) When a youth is taken into custody for a violation of placement under a home arrest program, a hearing to determine whether a violation occurred must be held within 24 hours, excluding weekends and holidays.

(3) The probable cause hearing required under subsection (1) may be held in person or by videoconference by the youth court, a justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the hearing or by an audio-video tape if the hearing is held by videoconference.

(4) A probable cause hearing may be conducted by telephone if other means of conducting the hearing are impractical. All written orders and findings of the court in a hearing conducted by telephone must bear the name of the judge or magistrate presiding in the case and the hour and date the order or findings were issued.

(5) A hearing is ~~not~~ required for a youth placed in detention for an alleged ~~parole~~ violation of the terms and conditions of the youth's conditional release agreement."

Section 13. Section 41-5-341, MCA, is amended to read:

"41-5-341. Criteria for placement of youth in secure detention facilities. A youth may be placed in a secure detention facility only if the youth:

(1) has allegedly committed an act that if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;

(2) is alleged to be a delinquent youth and:

(a) has escaped from a correctional facility or secure detention facility;

(b) has violated a valid court order or ~~a parole agreement~~ the terms and conditions of the youth's conditional release agreement;

(c) the youth's detention is required to protect persons or property;

(d) the youth has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(e) there are not adequate assurances that the youth will appear for court when required; or

(f) the youth meets additional criteria for secure detention established by the youth court in the judicial district that has current jurisdiction over the youth; or

(3) has been adjudicated delinquent and is awaiting final disposition of the youth's case."

Section 14. Section 41-5-1304, MCA, is amended to read:

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

(a) probation;

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

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

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

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

(f) confiscation of the youth's driver's license, if the youth has one, by the juvenile probation officer for a specified period of time, not to exceed 90 days. The juvenile 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 juvenile 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 juvenile probation officer may, in the juvenile 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.

- (g) a requirement that the youth receive counseling services;
- (h) placement in a youth assessment center for up to 10 days;
- (i) placement of the youth in detention for up to 3 days on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter;
- (j) a requirement that the youth perform community service;
- (k) a requirement that the youth participate in victim-offender mediation;
- (l) an agreement that the youth 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;
- (m) an agreement that the youth pay a contribution covering all or a part of the costs of a victim's counseling or restitution for damages that result from the offense for which the youth is disposed;
- (n) any other condition ordered by the court to accomplish the goals of the consent adjustment, including but not limited to mediation or youth assessment. Before ordering youth assessment, the court shall provide the family with an estimate of the cost of youth assessment, and the court shall take into consideration the financial resources of the family before ordering parental or guardian contribution for the costs of youth assessment.

~~(2) If the youth violates a parole agreement as provided for in 52-5-126, the youth must be returned to the court for further disposition. A youth may not be placed in a state youth correctional facility under a consent adjustment.~~

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

Section 15. Section 41-5-1432, MCA, is amended to read:

"41-5-1432. Enforcement of restitution orders. If the court orders payment of restitution and the youth fails to pay the restitution in accordance with the payment schedule or structure established by the court or

juvenile probation officer, the youth's juvenile probation officer may, on the officer's own motion or at the request of the victim, ~~file a petition for violation of probation or~~ ask the court to hold a hearing to determine whether the conditions of probation or commitment to the department should be changed. The juvenile probation officer shall ask for a hearing if the restitution has not been paid prior to 60 days before the term of probation or commitment to the department expires. The court shall schedule and hold the hearing before the youth's term of probation or commitment to the department expires."

Section 16. 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:

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

(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 if a committee has been established as provided for in 41-5-121.

(c) commit the youth to the youth court for the purposes of placement in a private, out-of-home facility subject to the conditions in 41-5-1522. In an order committing a youth 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.

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

(e) require the performance of community service;

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

(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;

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

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

(j) subject to the provisions of 41-5-1504, commit the youth to a mental health facility if, based on 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);

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

(l) order confiscation of the youth's driver's license, if the youth has one, by the juvenile probation officer for a specified period of time, not to exceed 90 days. The juvenile 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 juvenile 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 juvenile probation officer may, in the juvenile 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 and may not be used as grounds for denying coverage for an accident or other occurrence under an existing policy.

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

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

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

(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.

(ii) The placement for evaluation must be on a space-available basis. Except as provided in subsection

(1)(o)(iii), the court shall pay the cost of the placement for evaluation from its judicial district's allocation provided for in 41-5-130 or 41-5-2012.

(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.

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

(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 not 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 annual allocation established for that district under 41-5-130 without approval from the office of court administrator."

Section 17. 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(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility or other appropriate program as determined by the department and recommend to the department that the youth not be released until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

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

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

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

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

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

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

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

(e) 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.

(f) 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 sexual offense, as defined in 46-23-502, the youth court shall:

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

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

(c) require completion of sexual offender treatment; and

(d) for a youth designated under this section and 46-23-509 as a level 3 offender, impose on the youth those restrictions required for adult offenders by 46-18-255(2) unless the youth is approved by the youth court or the department for placement in a home, program, or facility for delinquent youth. Restrictions imposed pursuant to this subsection (2)(d) terminate when the jurisdiction of the youth court terminates pursuant to

41-5-205 unless those restrictions are terminated sooner by an order of the court. However, if a youth's case is transferred to district court pursuant to 41-5-203, 41-5-206, 41-5-208, or 41-5-1605, any remaining part of the restriction imposed pursuant to this subsection (2)(d) is transferred to the jurisdiction of the district court and the supervision of the offender is transferred to the department.

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

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

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

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

Section 18. Section 41-5-1522, MCA, is amended to read:

"41-5-1522. Commitment to department -- restrictions on placement. When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth while the youth is in a correctional facility or other program operated by or under contract with the department after considering the recommendations made by the youth placement committee if a committee has been established as provided for in 41-5-121. Placement is subject to the following limitations:

(1) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. ~~This section does not limit the power of the department~~

~~to enter into a parole agreement with the youth pursuant to 52-5-126.~~

(2) A youth may not be placed in or transferred to a state adult correctional facility or other facility used for the execution of sentences of adults convicted of crimes.

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

Section 19. Section 41-5-1523, MCA, is amended to read:

"41-5-1523. Commitment to department or youth court -- supervision. (1) A youth placed in a state youth correctional facility or other facility or program operated by or under contract with the department ~~or who signs a parole agreement under 52-5-126~~ must be supervised by is under the control of the department until the youth is discharged, transferred, or placed on conditional release by the department. Before a youth is placed on conditional release, a conditional release agreement must be developed and signed as provided in 52-5-126.

(2) A youth who is placed on conditional release must be supervised by a juvenile probation officer of the youth court.

~~(2)~~(3) A youth placed in any private, out-of-home facility by the youth court must be supervised by a juvenile probation officer of the youth court.

~~(3)~~(4) Responsibilities of the juvenile probation officer relating to placement of the youth include but are not limited to:

(a) if a youth placement committee has been established as provided for in 41-5-121, submitting information and documentation necessary for the committee that is making the placement recommendation to determine an appropriate placement for the youth;

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

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

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

Section 20. Section 41-5-1524, MCA, is amended to read:

"41-5-1524. Commitment to department -- transfer of records. (1) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of formal and informal youth court records, including medical reports, social history material, youth assessment material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(2) The youth court may share informal youth court records with the department when a youth has been committed to the department ~~of corrections for custody~~. On the youth's 18th birthday or upon discharge, whichever is earlier, the department shall seal the entire record and is subject to 41-5-216(5).

(3) ~~If the department returns the youth back to youth court supervision on the youth's 18th birthday as required by the court order, the~~ The department shall transmit to the supervising juvenile probation ~~office~~ officer any medical reports, youth assessment material, education records, and other clinical or behavioral health information pertinent to the care and treatment of the youth if the department:

- (a) places the youth on conditional release;
- (b) discharges the youth to the youth court for supervision as required by court order; or
- (c) transfers the youth as provided for in 41-5-208."

Section 21. Section 41-5-1604, MCA, is amended to read:

"41-5-1604. Disposition in extended jurisdiction juvenile prosecutions. (1) (a) After designation as an extended jurisdiction juvenile prosecution, the case must proceed with an adjudicatory hearing, as provided in 41-5-1502. If a youth in an extended jurisdiction juvenile prosecution admits to or is adjudicated to have committed an offense that would be a felony if committed by an adult, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, the court shall, subject to subsection (1)(b), impose a single judgment consisting of:

- (i) one or more juvenile dispositions under 41-5-1512 or 41-5-1513; and
- (ii) any sentence allowed by the statute that establishes the penalty for the offense of which the youth is convicted and that would be permissible if the offender were an adult. The execution of the sentence imposed under this subsection must be stayed on the condition that the youth not violate the provisions of the disposition order and not commit a new offense.

(b) The combined period of time of a juvenile disposition under subsection (1)(a)(i) plus an adult sentence under subsection (1)(a)(ii) may not exceed the maximum period of imprisonment that could be imposed

on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This subsection does not limit the power of the department to enter into a ~~parole~~ conditional release agreement with the youth pursuant to 52-5-126.

(2) If a youth prosecuted as an extended jurisdiction juvenile after designation by the county attorney in the delinquency petition under 41-5-1602(1)(b) admits to or is adjudicated to have committed an offense that would be a felony if committed by an adult that is not an offense described in 41-5-1602(1)(b), except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, the court shall adjudicate the youth delinquent and order a disposition under 41-5-1513.

(3) If a youth in an extended jurisdiction juvenile prosecution admits to or is adjudicated to have committed an offense that would not be a felony if committed by an adult, the court shall impose a disposition as provided under subsection (1)(a)."

Section 22. Section 41-5-1703, MCA, is amended to read:

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

- (a) perform the duties set out in 41-5-1302;
- (b) make predisposition studies and submit reports and recommendations to the court;
- (c) supervise, assist, and counsel youth placed on probation or conditional release or under the juvenile probation officer's supervision, including enforcement of the terms of probation or conditional release or intervention;
- (d) assist any public and private community and work projects engaged in by youth to pay fines, make restitution, and pay any other costs ordered by the court that are associated with youth delinquency or need for intervention;
- (e) perform any other functions designated by the court.

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

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

Section 23. Section 41-5-2005, MCA, is amended to read:

"41-5-2005. Youth placement committee recommendation to youth court judge -- acceptance or rejection. (1) (a) Prior to commitment of a youth to the legal custody of the youth court under 41-5-1512 or 41-5-1513 ~~or to the department under 41-5-1513~~, a youth placement committee ~~must~~ may be ~~convened~~ established as provided for in 41-5-121. Except as provided in subsection (1)(b), the committee, if established, shall submit in writing to the youth court judge its primary and alternative recommendations for placement of the youth.

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

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

(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 annual allocation provided by the office of court administrator under 41-5-130."

Section 24. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definitions. (1) (a) As used in 45-5-502, 45-5-503, and 45-5-508, the term "consent" means words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is further defined but not limited by the following:

(i) an expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn;

(ii) a current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent; and

(iii) lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.

(b) Subject to subsections (1)(c) and (1)(d), the victim is incapable of consent because the victim is:

(i) mentally disordered or incapacitated;

(ii) physically helpless;

(iii) overcome by deception, coercion, or surprise;

(iv) less than 16 years old;

(v) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation, conditional release, or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

(vi) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the youth care facility; or

(vii) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the facility or community-based service.

(c) Subsection (1)(b)(v) does not apply if the individuals are married to each other and one of the individuals involved is on probation, conditional release, or parole and the other individual is a probation or parole officer of a supervising authority.

(d) Subsections (1)(b)(vi) and (1)(b)(vii) do not apply if the individuals are married to each other and one

of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.

(2) As used in 45-5-508, the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

(3) As used in 45-5-502 and this section, the following definitions apply:

~~(a)~~ "Conditional release", in the case of a youth offender, has the meaning provided in 41-5-103.

~~(a)(b)~~ "Parole":

~~(i)~~ in the case of an adult offender, has the meaning provided in 46-1-202; ~~and~~

~~(ii) in the case of a juvenile offender, means supervision of a youth released from a state youth correctional facility, as defined in 41-5-103, to the supervision of the department of corrections.~~

~~(b)(c)~~ "Probation" means:

(i) in the case of an adult offender, release without imprisonment of a defendant found guilty of a crime and subject to the supervision of a supervising authority; and

(ii) in the case of a juvenile youth offender, supervision of the juvenile youth by a youth court pursuant to Title 41, chapter 5.

~~(c)(d)~~ "Supervising authority" includes a court, including a youth court, a county, or the department of corrections."

Section 25. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) (a) On a first conviction for sexual assault, the offender shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction for sexual assault, the offender shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

(c) On a third and subsequent conviction for sexual assault, the offender shall be fined an amount not to exceed \$10,000 or be imprisoned for a term not to exceed 5 years, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than \$50,000.

(4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.

(5) (a) Subject to subsections (5)(b) and (5)(c), consent is ineffective under this section if the victim is:

(i) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation, conditional release, or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

(ii) less than 14 years old and the offender is 3 or more years older than the victim;

(iii) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the youth care facility; or

(iv) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the facility or community-based service.

(b) Subsection (5)(a)(i) does not apply if one of the parties is on probation, conditional release, or parole and the other party is a probation or parole officer of the supervising authority and the parties are married to each other.

(c) Subsections (5)(a)(iii) and (5)(a)(iv) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service."

Section 26. Section 46-23-102, MCA, is amended to read:

"46-23-102. Cases of juveniles excluded. The provisions of parts 1, 2, 3, and 10 of this chapter ~~shall~~ do not apply to probation in the juvenile youth courts or to ~~parole~~ conditional release from state institutions for juveniles youth correctional facilities."

Section 27. Section 52-5-102, MCA, is amended to read:

"52-5-102. Control and management of youth correctional facilities. The facilities provided for in 52-5-101 shall exercise their functions under the supervision and general management of the department of corrections. Except where otherwise provided by law, the department by rules shall establish standards of care and policies of admission, transfers, discharge, and ~~parole supervision~~ conditional release in order to provide adequate care for children and adequate service to the courts. Policies of admission may include criteria for medical examinations required under 52-5-108. The department shall develop special programs within each facility that are adaptable to the particular needs of its operation."

Section 28. Section 52-5-103, MCA, is amended to read:

"52-5-103. Cooperative agreements for services with governing body of Indian tribe. (1) The department of corrections may enter into agreements with the governing body of an Indian tribe within the state for residential, educational, and evaluation, ~~and parole~~ services maintained by the department for children who have been adjudicated delinquent by the tribal court, subject to the provisions of this part and parts 1 and 2 of Title 53, chapter 1.

(2) Any agreement entered into under subsection (1) must also satisfy the requirements of Title 18, chapter 11."

Section 29. Section 52-5-109, MCA, is amended to read:

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

(a) for a youth placed in a facility, other than a state youth correctional facility or a detention facility, the judicial district of the youth court to which the youth has been referred shall pay the cost for transporting the youth to the facility and for any other transportation costs incurred while the youth is in the facility. The district shall pay

these costs from its annual allocation provided for in 41-5-130.

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

(2) After adjudication:

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

(b) for a youth committed to the department of corrections for placement in an in-state youth correctional facility or returned to the department for violation of the terms and conditions of the youth's conditional release agreement, the county of the youth court in which the youth was adjudicated shall pay the cost for transporting the youth to the facility. The department shall pay the cost for transporting the youth after the youth is released from the facility or provide other arrangements for transporting the youth.

(c) for a youth placed in an out-of-state correctional facility pursuant to 41-5-355, the department of corrections shall pay the cost for transporting the youth to the facility and the cost for transporting the youth after the youth is released from the facility.

(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 or when the department of~~ corrections is responsible for transportation costs as provided for in subsections (2)(b) and (2)(c)."

Section 30. Section 52-5-126, MCA, is amended to read:

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

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

~~_____ (b) a statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided for in 52-5-129 before being returned to the facility. At least 30 days before a youth is released by the department of corrections from a state youth~~

correctional facility to the supervision, custody, and control of the youth court, the department, youth, and juvenile probation officer assigned to the youth shall develop a conditional release agreement for the youth.

(2) At least 14 days before the youth is released, the department, youth, and juvenile probation officer shall finalize and sign the conditional release agreement. The agreement must contain a statement advising the youth of the youth's rights under [section 1] and the terms and conditions that may result in a revocation of the youth's conditional release.

~~(2)(3)~~ A conditional release agreement for a youth released from a state youth correctional facility for commitment to a mental health facility pursuant to Title 53, chapter 21, part 1, shall sign a parole agreement that will must remain in effect until the department youth court no longer has custody of the youth."

Section 31. Section 52-5-127, MCA, is amended to read:

"52-5-127. Control over youth released under parole agreement placed on conditional release.

The ~~department of corrections~~ youth court has control over a youth released ~~pursuant to a parole agreement under 52-5-126~~ by the department of corrections pursuant to a conditional release agreement under 52-5-126 until the youth attains 18 years of age unless the youth is discharged by the ~~department~~ youth court before age 18. However, the youth is subject to the continuing jurisdiction of the youth courts of Montana, pursuant to 41-5-205, for acts committed by the youth ~~while under the control of the department.~~"

Section 32. Section 52-5-128, MCA, is amended to read:

"52-5-128. Detention of youth who violates parole agreement conditional release or escapes from facility or program.

(1) A juvenile probation officer may detain a youth who ~~violates~~ allegedly has violated the terms and conditions of the youth's ~~parole agreement~~ conditional release agreement. A law enforcement officer of the state or a county or a city shall detain a youth who has allegedly violated the terms and conditions of the youth's conditional release agreement upon receipt of a warrant to detain the youth.

(2) The department of corrections may detain a youth who has escaped ~~or who escapes~~ from a state youth correctional facility or program operated by or under contract with the department, ~~may be detained by the department or by a~~ A law enforcement officer of the state; or a county; or a city of the state shall detain a youth upon notice in writing to the officer by the department to the effect that the youth has violated the terms and conditions of the youth's ~~parole agreement~~ or has escaped from a state youth correctional facility or program

operated by or under contract with the department."

Section 33. Section 53-1-203, MCA, is amended to read:

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

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

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

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

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

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

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

~~(vi)~~(v) to carry out the purposes of Article II, section 36, of the Montana constitution;

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

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

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

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 46-18-201 or 46-18-202, and any other sections relating to alternative sentences for persons

convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

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

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

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

(g) encourage efforts within the department and at the local level that would develop housing options and resource materials related to housing for individuals who are released from the Montana state prison or community corrections programs;

(h) maintain data on the number of individuals who are discharged from the adult correction services listed in 53-1-202 into a homeless shelter or a homeless situation;

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

(j) collect and disseminate information relating to youth who are committed to the department for placement in a state youth correctional facility;

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

(l) provide funding for youth who are committed to the department for placement in a state youth correctional facility;

(m) administer youth correctional facilities; and

~~(n) provide supervision, care, and control of youth released from a state youth correctional facility; and~~

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

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

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

(2) The department may contract with private, nonprofit or for-profit Montana corporations to establish

and maintain a residential sexual offender treatment program. If the department intends to contract for that purpose, the department shall adopt rules for the establishment and maintenance of that program.

(3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

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

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

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

(7) The department shall ensure that risk and needs assessments drive the department's supervision and correctional practices, including integrating assessment results into supervision contact standards and case management. The department shall regularly validate its risk assessment tool."

Section 34. Appropriation. For the biennium beginning July 1, 2019, there is appropriated \$10 from the general fund to the department of justice to implement the provisions of [this act].

Section 35. Repealer. The following section of the Montana Code Annotated is repealed:
52-5-129. Hearing on alleged violation of parole agreement -- waiver of hearing -- right to appeal outcome.

Section 36. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to [section 1].

Section 37. Contingent voidness. If the appropriation in House Bill No. 2 to the department of corrections for juvenile parole placement and services is not transferred to the office of court administrator, then [this act] is void.

Section 38. Effective date. [This act] is effective July 1, 2019.

Section 39. Applicability. [This act] applies to youth residing in a state youth correctional facility, in a residential placement approved by the department, or on parole and under community supervision on or after July 1, 2019.

- END -

I hereby certify that the within bill,
HB 0111, originated in the House.

Speaker of the House

Signed this _____ day
of _____, 2019.

Chief Clerk of the House

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 111
INTRODUCED BY F. FLEMING
BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

AN ACT GENERALLY REVISING YOUTH COURT LAWS CONCERNING JUVENILE PLACEMENT AND PAROLE SUPERVISION; TRANSFERRING JUVENILE PAROLE SUPERVISION FROM THE DEPARTMENT OF CORRECTIONS TO THE YOUTH COURT; PROVIDING FOR CONDITIONAL RELEASE IN PLACE OF PAROLE SUPERVISION AND DEFINING THE TERM "CONDITIONAL RELEASE"; PROVIDING THAT THE ESTABLISHMENT OF A YOUTH PLACEMENT COMMITTEE IS PERMISSIVE RATHER THAN MANDATORY; PROVIDING A PROCEDURE WITHIN THE YOUTH COURT FOR CONDUCTING A CONDITIONAL RELEASE REVOCATION HEARING; PROVIDING FOR AN APPROPRIATION; AMENDING SECTIONS 10-1-1402, 20-9-327, 41-5-103, 41-5-121, 41-5-124, 41-5-125, 41-5-130, 41-5-131, 41-5-132, 41-5-215, 41-5-332, 41-5-341, 41-5-1304, 41-5-1432, 41-5-1512, 41-5-1513, 41-5-1522, 41-5-1523, 41-5-1524, 41-5-1604, 41-5-1703, 41-5-2005, 45-5-501, 45-5-502, 46-23-102, 52-5-102, 52-5-103, 52-5-109, 52-5-126, 52-5-127, 52-5-128, AND 53-1-203, MCA; REPEALING SECTION 52-5-129, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.