LJIC Options to Improve, Simplify, and Streamline the Youth Court Act
(Based on LJIC Panel Feedback)
By James Reavis, co-sponsor of HJ 23

Option 1: Expand timeline to hold required transfer hearings from 30 days to 90 days.

Rationale: Before a transfer hearing can be held, attorneys need to learn about the case, investigate the case, and conduct an evaluation of the youth. In practice, this usually does not happen within 30 days. Changing the timeline to 90 days is more realistic for all parties and was supported by the stakeholders.

Legal Language: Amend 41-5-206(3) to say "Within ~~30~~ 90 days after leave to file the information is granted . . ."

Option 2: Move DUI, alcohol, tobacco, marijuana, and gambling violations to the Youth Court System.

Rationale: There was strong stakeholder support for moving DUI's and MIP offenses over to the youth court system, where there are more support options for youths who need assistance. It is anticipated that most of the MIP matters will be resolved informally with a youth probation officer. If this change had been in effect last year, 1,053 cases would have been taken off the statewide COLJ caseload. If this change is made, COLJ courts would have non-DUI traffic tickets and fish/game offenses left for youth.

Legal Language: Amend 41-5-203 to say: (1) Except ~~as provided in subsection (2) and~~ for cases filed in the district court under **41-5-206**, the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a young offender ~~delinquent youth or a youth in need of intervention~~ or concerning any person under 21 years of age charged with having violated any law of the state or any ordinance of a city or town other than a traffic (except for a violation under Title 61, Chapter 8, Part 10) or fish and game law prior to having become 18 years of age.

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

Note: The "under 21" MIP offenses may need to be modified as well to reflect different penalties for 18-20 year-olds as opposed to under 18.

Option 3: Seal youth court records from public viewing from the outset rather than at the end of the case.

Rationale: Different counties across the state have different practices on whether youth court records are to be sealed or not sealed. Some seal everything, some seal some things, and others do not seal at all. A youth required to register for a sexual offense would still be public information on the registry.

Legal Language: Substantially amend 41-5-215 and 41-5-216 to state that all youth court records are sealed unless certain circumstances are met, which are provided for in the statutes.

Note: There was also stakeholder support for sealing records of youth charged as adults until the transfer hearing was concluded, but there may be some technical difficulties. I have been informed that this proposed sealing practice should be possible in FullCourt, but it would require investigation into the IT system to see if it could be done efficiently. Otherwise, youth charged as adults would be publicly available district court criminal cases as they are now.

Option 4: Eliminate 208 transfer hearings and replace them with consistent, predictable sentences imposed by the youth court judge.

Rationale: 208 transfer hearings have become a source of litigation, appellate reversals, uncertainty, and confusion for judges, youth, and victims. Rather than multiple returns to court, the severity of the sentence should be decided at the outset of the case when the parties are in the best position to know the facts and the sentence can be known by everyone. This proposal sets out new rules for sentencing of

youths beyond the age of 18 who kept their cases in youth court. The youth sentence review procedure would still be available for particularly long sentences to show that the youth has been rehabilitated (see option 5).

Legal Language: A rewritten **41-5-208. Transfer of supervisory responsibility to district court after juvenile disposition.**
(1) After adjudication by the youth court of a case that was not sentenced to district court pursuant to **41-5-206** and where the youth court wishes to impose a disposition extending beyond age of 18 after consideration of the seriousness of the offense, the youth's history, and the need for community protection, the youth court may at disposition impose a term of probation for a set period of time, not to exceed the maximum period that could be imposed on an adult convicted of the offense or seven years, whichever is less, to be supervised by the district court and adult probation officers.
(2) When the length of the term of probation imposed under subsection (1) ends at or before the youth's 21st birthday, the youth court may order that supervision be conducted by a juvenile probation officer in place of an adult probation officer so long as the youth remains in compliance. If, in the judgment of the juvenile probation officer, the youth has violated the conditions of probation, the juvenile probation officer shall file a report with the court and the remainder of the term of probation starting from the date the report is filed shall be supervised by an adult probation officer. A youth facing a term of probation imposed under this subsection shall be advised of the consequences of a violation at disposition.
(3) Petitions to revoke a term of probation established under this section when the youth is supervised by an adult probation officer shall be addressed by 46-18-203.
(4) If a term imposed under this section extends beyond the youth's 21st birthday, the district court shall review the youth's sentence pursuant to [41-5-2510 or as renumbered] before the youth reaches the age of 21 if a hearing has not been requested under [41-5-2510 or as renumbered]. The department shall notify the court of the youth's impending birthday no later than 90 days before the youth's 21st birthday.

Statute 41-5-205 would also need to be amended to reflect this updated statute.

Note: For this option to be the most optimally effective, resources should be provided to Adult Probation and Parole to have some probation officers trained in supervising young offenders with a greater focus on rehabilitation, much like how specialized training is provided to some officers for probationers with serious mental health issues.

Option 5: Repeal the Extended Jurisdiction Prosecution Act and renumber the Criminally Convicted Youth Act.

Rationale: This option works in conjunction with Option 4 to help provide greater certainty for sentences imposed by youth court judges. Stakeholders talked about how the extended jurisdiction act is rarely used, confusing, and potentially unconstitutional. When combined with Option 4, youth charged as adults will receive adult sentences, and youth who remain in youth court will receive certain sentences as well. When sentences are imposed beyond the age of 21, a sentence review hearing for all youth is still available.

Legal Language: Repeal Title 41, Chapter 5, Part 16. Repeal 41-5-2501, 41-5-2502. Repeal and renumber 41-5-2503 by amending 41-5-206 to add a new subsection at the end of the statute:
[41-5-206(new subsection)]: When a youth is sentenced under this section as an adult, the court shall order the department to submit a status report to the court, county attorney, defense attorney, and juvenile probation officer every 6 months until the youth attains the age of 21. The report must include a recommendation from the department regarding the continued disposition of the youth. The district court shall review the youth's sentence pursuant to [41-5-2510 or as renumbered] before the youth reaches the age of 21 if a hearing has not been requested under [41-5-2510 or as renumbered]

Next, renumber 41-5-2510 to a number like 41-5-209 and have it say:

[41-5-209 or as renumbered]. Sentence review hearing. (1) When a youth has been convicted as an adult pursuant to the provisions of **41-5-206**, or has a term imposed under **41-5-208** that extends beyond the youth's 21st birthday, ~~except for offenses punishable by death or life imprisonment or when a sentence of 100 years could be imposed,~~ the county attorney, defense attorney, or youth may, at any time before the youth reaches the age of 21, request a hearing to review the sentence imposed on the youth. The department shall notify the court of the youth's impending birthday no later than 90 days before the youth's 21st birthday.

(2) After reviewing the status report and upon motion for a hearing, or when required under [41-5-206 and 41-5-208], the court shall ~~determine whether to~~ hold a ~~criminally convicted~~ youth sentence review hearing. ~~If the court, in its discretion, determines that a sentence review hearing is warranted or is required under 41-5-2503,~~ The hearing must be held within 90 days after the filing of the request or determination. The sentencing court or county attorney shall notify the victim of the offense pursuant to Title 46, chapter 24.

(3) The sentencing court shall review the department's records, formal youth court records, victim statements, and any other pertinent information.

(4) The sentencing court, after considering the criminal, social, psychological, and any other records of the youth; any evidence presented at the hearing; and any statements by the victim and by the parent or parents or guardian of the youth and any other advocates for the youth shall determine whether the criminally convicted youth has been substantially rehabilitated based upon a preponderance of the evidence.

(5) In the event that the sentencing court determines that the youth has been substantially rehabilitated, the court shall determine whether to:

(a) suspend all or part of the remaining portion of the sentence, impose conditions and restrictions pursuant to **46-18-201**, make any additional recommendations to the department regarding the placement and treatment of the youth, and place the youth on probation under the direction of the department, unless otherwise specified;

(b) ~~impose~~ vacate all or part of the remaining sentence ~~and make any additional recommendations to the department regarding the placement and treatment of the criminally convicted youth~~; or

(c) impose a combination of options allowed under subsections (5)(a) and (5)(b), not to exceed the total sentence remaining.
~~(6) The sentencing court may revoke a suspended sentence of a criminally convicted youth pursuant to **46-18-203**.~~

Option 6: Clean up and modernize code by replacing "delinquent youth" and "youth in need of intervention" with "young offender"

Rationale: There was significant stakeholder support for updating the language of adjudicated delinquent youths by calling them "young offenders" instead. Additionally, by integrating the definition of "youth in need of intervention" within the young offender definition, a substantial amount of code clutter can be cleaned up for the rarely used definition.

Legal Language: In 41-5-103, strike out the definitions of "delinquent youth" and "youth in need of intervention" and replace with"

"Young offender" 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;
(b) who has been placed on probation as a delinquent youth and who has violated any condition of probation;
(c) who has violated the terms and conditions of the youth's conditional release agreement; or
(d) 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.

Next, amend 41-5-345 to state:
41-5-345. Limitation on placement of ~~youth in need of intervention~~ certain young offenders. (1) After a probable cause hearing provided for in **41-5-332**, a youth alleged to be a ~~youth in need~~

~~of intervention~~ young offender under 41-5-103(#)(d) may be placed only in shelter care, as provided in **41-5-347**.
(2) A youth alleged or found to be a ~~youth in need of intervention~~ young offender only under 41-5-103(#)(d) may not be placed in a jail, secure detention facility, or correctional facility.

Option 7: Eliminate mandatory filings for 17-year-olds and clarify burden of proof language in transfer hearings.

Rationale: County attorneys currently do not have the discretion to charge 17-year-olds in youth court for offenses that fall under 41-5-206(1). Removing the mandatory filing requirement will return discretion to the prosecutors to charge a youth as an adult or not. Additionally, this could help clarify the burden of proof in transfer hearings. Charging a youth as an adult would be a willing decision by a prosecutor, who must get approval from the judge. The youth who then opposes that decision can use the process under 41-5-206(3) to establish by a preponderance of the evidence for transfer back to youth court.

Legal Language: Repeal 41-5-206(2) and amend the final sentence of 41-5-206(3) to say: The district court ~~may not~~ shall transfer the case back to the youth court ~~unless~~ if the district court finds, by a preponderance of the evidence, that:
(a) a youth court proceeding and disposition will serve the interests of community protection;
(b) the nature of the offense does not warrant prosecution in district court; and
(c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

Option 8: Require that 12-year-olds or younger may only be arrested pursuant to an arrest warrant.

Rationale: Judges asked the committee to have a greater say as to when children 12-years-old or younger are taken into juvenile custody. Requiring judicial permission for very young youth could help reduce overcrowding in juvenile detention facilities.

Legal Language: Add the following to 41-5-321:
(1) A youth may be taken into custody under the following circumstances:
(a) by a law enforcement officer pursuant to a lawful order or process of any court;
(b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;
(c) by a juvenile home arrest officer or an officer listed in subsections (1)(a) and (1)(b) if a youth placed under a home arrest program has violated a condition of the placement and the home arrest officer or law enforcement officer has direct knowledge of the violation or a juvenile probation officer has provided the juvenile home arrest officer notice of a violation.
(2) A youth aged 12 years or younger may only be taken into custody pursuant to a lawful order of the youth court.
~~(2)~~ (3) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States.
(4) A summons to appear may be issued in the alternative to taking a youth into custody.

Option 9: Repeal the now-defunct "Youth Court Committee"

Rationale: The Youth Court Committee was put in place back when funding was allocated on a county level rather than the statewide funding system for youth courts and youth probation officers that is in place today. A survey of the chief youth probation officers shows that there appears to be no youth court committee in present use. Please note that the "Youth Court Committee" is different from the "Youth Placement Committee" which is still used in the State and would remain unchanged by this repeal.

Legal Language: Repeal 41-5-105.