

## 1 HOUSE BILL NO. 460

2 INTRODUCED BY JAMES MOORE (BY REQUEST)

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A  
5 HEARING ON AN ALLEGED VIOLATION OF YOUTH'S AFTERCARE  
6 AGREEMENT, AMENDING SECTION 80-1414, R.C.M. 1947; AND  
7 REPEALING SECTION 80-1416, R.C.M. 1947."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:10 Section 1. Section 80-1414, R.C.M. 1947, is amended to  
11 read as follows:

12 "80-1414. Aftercare agreement to be signed by ~~child~~  
13 youth before release from juvenile facility to custody of  
14 department -- agreement to contain notice of youth's right  
15 to hearing on violation of agreement. A ~~child~~ youth  
16 released by the department from one of the state juvenile  
17 facilities to the supervision, custody, and control of the  
18 department shall, before his release, sign an aftercare  
19 agreement containing: ~~the-terms-and-conditions--under--which~~  
20 ~~the-child-is-released;~~

21 (1) A complete statement of the terms and conditions  
22 of his release, including a list of the specific acts,  
23 which, if committed by the youth, may result in his return  
24 to the facility; and

25 (2) A statement that if the department or any person

1 alleges any violation of the terms and conditions of the  
2 agreement, the youth shall be given a hearing as provided  
3 for in section 80-1414.1, R.C.M. 1947, before he may be  
4 returned to the facility."

5 Section 2. There is a new R.C.M. section numbered  
6 80-1414.1 that reads as follows:

7 80-1414.1. Hearing on alleged violation of aftercare  
8 agreement -- appeal to the district court. (1) When an  
9 allegation of a violation of the terms and conditions of a  
10 youth's aftercare agreement is made by the department or by  
11 any person, the youth shall be granted a hearing at or near  
12 the site of the alleged violation within ten (10) days after  
13 the day that the allegation was made to determine:

14 (a) Whether the youth committed the violation; and

15 (b) Whether the violation is of such a nature that he  
16 should be returned to the juvenile facility from which he  
17 was released.

18 (2) With regard to this hearing, the youth shall be  
19 given:

20 (a) Written notice of the alleged violation of his  
21 aftercare agreement, including notice that the purpose of  
22 the hearing is to determine whether he has committed the  
23 violation, and, if so, whether or not the violation is of  
24 such a nature that he should be returned to the juvenile  
25 facility from which he was released;

1 (b) Disclosure of the evidence against him;

2 (c) Opportunity to be heard in person and to present  
3 witnesses and documentary evidence to controvert the  
4 evidence against him, and to show that there are compelling  
5 reasons which justify or mitigate the violation;

6 (d) The right to confront and cross-examine adverse  
7 witnesses;

8 (e) The right to be represented by an attorney; and

9 (f) A verbatim record of the hearing.

10 (3) The department shall appoint impartial persons,  
11 none of whom may be employees of the department, to one or  
12 more administrative boards of review of not less than three  
13 (3) members, to conduct the hearing. The department shall  
14 adopt rules and regulations necessary to effect a prompt and  
15 full review.

16 (4) If the board finds, by a preponderance of the  
17 evidence, that the youth did in fact commit the alleged  
18 violation, and that there are no compelling reasons which  
19 justified or mitigated the violation, the department may  
20 return the youth to the juvenile facility from which he was  
21 released.

22 (5) Either the department or the youth may appeal from  
23 the decision at the hearing to the district court of the  
24 county in which the alleged violation occurred, by serving  
25 and filing a notice of appeal with the court within ten (10)

1 days of the decision. The district court, upon receipt of a  
2 notice of appeal, shall order the department to promptly  
3 certify to the court a record of all proceedings before the  
4 board and shall proceed to a prompt hearing on the appeal,  
5 based upon the record on appeal. The decision of the board  
6 shall not be altered except for abuse of discretion or  
7 manifest injustice.

8 (6) Pending the hearing on a violation, a youth may  
9 not be detained except when his detention or care is  
10 required to protect the person or property of the youth or  
11 of others; or he may abscond or be removed from the  
12 community in which the alleged violation occurred.  
13 Procedures for taking into custody and detention of a youth  
14 charged with violation of his aftercare agreement shall be  
15 as provided in sections 10-1211, and 10-1214, R.C.M. 1947,  
16 except that detention pending a hearing on alleged violation  
17 may not be for longer than 48 hours.

18 Section 3. Section 80-1416, R.C.M. 1947, is repealed.

-End-

## STATE OF MONTANA

REQUEST NO. 237-75

## FISCAL NOTE

Form BD-15

In compliance with a written request received February 19, 19 75, there is hereby submitted a Fiscal Note for House Bill 460 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

## DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 460 provides for a hearing on an alleged violation of youth's aftercare agreement.

## ASSUMPTIONS:

1. An estimated 12% of youth offenders or 108 persons annually would require hearing proceedings.
2. The hearing proceedings would require court recording equipment and contracted services for hearing officers, legal representation and witness fees.

## FISCAL IMPACT:

Increase in expenditures by category:	FY 76	FY 77
Operating Expenses	\$ 27,116	\$ 29,828
Capital Outlay	<u>2,800</u>	<u>0</u>
Total increase in expenditures	<u>\$ 29,916</u>	<u>\$ 29,828</u>

## CONCLUSION:

Enactment of House Bill 460 would result in additional expenditures of \$59,744 during the 1975-77 biennium.

*Michael B. Billings*

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: February 22, 1975

Approved by Committee  
on Judiciary

HOUSE BILL NO. 460

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

Section 1. Section 80-1414, R.C.M. 1947, is amended to read as follows:

"80-1414. Aftercare agreement to be signed by ~~child~~ youth before release from juvenile facility to custody of department ~~-- agreement to contain notice of youth's right to hearing on violation of agreement.~~ A ~~child~~ youth released by the department from one of the state juvenile facilities to the supervision, custody, and control of the department shall, before his release, sign an aftercare agreement containing: ~~the terms and conditions under which the child is released.~~

(1) A complete statement of the terms and conditions of his release, including a list of the specific acts, which, if committed by the youth, may result in his return to the facility; and

(2) A statement that if the department or any person

alleges any violation of the terms and conditions of the agreement, the youth shall be given IS ENTITLED TO a hearing as provided for in section 80-1414.1, R.C.M. 1947, before he may be returned to the facility. THE YOUTH, UPON ADVICE OF AN ATTORNEY, MAY WAIVE HIS RIGHT TO A HEARING."

Section 2. There is a new R.C.M. section numbered 80-1414.1 that reads as follows:

80-1414.1. Hearing on alleged violation of aftercare agreement -- appeal to the district court. (1) When an allegation of a violation of the terms and conditions of a youth's aftercare agreement is made by the department or by any person, the youth shall be granted a hearing at or near the site of the alleged violation within ten (10) days after the day that the allegation was made to determine:

(a) Whether the youth committed the violation; and

(b) Whether the violation is of such a nature that he should be returned to the juvenile facility from which he was released.

(2) With regard to this hearing, the youth shall be given:

(a) Written notice of the alleged violation of his aftercare agreement, including notice that the purpose of the hearing is to determine whether he has committed the violation, and, if so, whether or not the violation is of such a nature that he should be returned to the juvenile

1 facility from which he was released;

2 (b) Disclosure of the evidence against him;

3 (c) Opportunity to be heard in person and to present  
4 witnesses and documentary evidence to controvert the  
5 evidence against him, and to show that there are compelling  
6 reasons which justify or mitigate the violation. EITHER  
7 PARTY SHALL HAVE THE POWER TO ISSUE SUBPOENAS TO WITNESSES;

8 (d) The right to confront and cross-examine adverse  
9 witnesses;

10 (e) The right to be represented by an attorney; and

11 (f) A verbatim record of the hearing WHICH MAY BE  
12 TAKEN BY TAPE RECORDER AND TRANSCRIBED ON APPEAL.

13 (3) The department shall appoint ~~impartial--persons,~~  
14 ~~none--of-whom-may-be-employees~~ A REFEREE WHO SHALL NOT BE AN  
15 EMPLOYEE of the department, ~~to one--or--more--administrative~~  
16 ~~boards--of--review--of--not--less--than--three--(3)--members,~~ to  
17 conduct the hearing. The department shall adopt rules and  
18 regulations necessary to effect a prompt and full review.

19 (4) If the board finds, by a preponderance of the  
20 evidence, that the youth did in fact commit the alleged  
21 violation, and that there are no compelling reasons which  
22 justified or mitigated the violation, the department may  
23 return the youth to the juvenile facility from which he was  
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25 YOUTH LISTING HIS DECISION AND THE REASONS FOR HIS DECISION.

1 (5) Either the department or the youth may appeal from  
2 the decision at the hearing to the district court of the  
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19 as provided in sections 10-1211, and 10-1214, R.C.M. 1947,  
20 except that detention pending a hearing on alleged violation  
21 may not be for longer than ~~40~~ SEVENTY-TWO (72) hours.

22 Section 3. Section 80-1416, R.C.M. 1947, is ~~repealed~~  
23 AMENDED TO READ AS FOLLOWS:

24 "80-1416. Detention of child who violates aftercare  
25 agreement--delivery on request to department. A child who

1 violates the terms and conditions of his aftercare agreement  
2 may be detained, by the department or by a law officer of  
3 the state, county, or city of the state, upon certificates  
4 in writing to the officer by the department to the effect  
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6 aftercare agreement. ~~Upon detention by the law officer the~~  
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8 ~~department, and the department may:~~  
9       ~~(1) return the child to one of the juvenile facilities~~  
10 ~~of the state; or~~  
11       ~~(2) continue the child under the supervision of the~~  
12 ~~department."~~

-End-

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12 ~~department."~~

-End-

March 24, 1975

SENATE COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

AMENDMENTS TO HOUSE BILL NO. 460

That House Bill No. 460, third reading, be amended as follows:

1. Amend page 3, section 2, line 19.  
Following: "the"  
Strike: "board"  
Insert: "referee"
2. Amend page 3, section 2, line 24.  
Following: "WRITTEN"  
Strike: "STATEMENT"  
Insert: "decision"
3. Amend page 3, section 2, line 25.  
Following: "LISTING"  
Strike: "HIS DECISION AND"
4. Amend page 4, section 3, line 24.  
Following; "of"  
Strike: "child"  
Insert: "youth"
5. Amend page 4, section 3, line 25.  
Following: "A"  
Strike: "child"  
Insert: "youth"
6. Amend page 5, section 3, line 5.  
Following: "that the"  
Strike: "child"  
Insert: "youth"

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6 department to the effect that the ~~child~~ YOUTH has violated  
7 the terms and conditions of his aftercare agreement. ~~Upon~~  
8 ~~detention-by-the-law-officer-the-child-shall,-on-request,-be~~  
9 ~~delivered---to--the--custody--of--the--department,--and--the~~  
10 ~~department-may:~~  
11 ~~(1)-Return-the-child-to-one-of-the-juvenile--facilities~~  
12 ~~of-the-state,-or~~  
13 ~~(2)--Continue--the--child--under-the-supervision-of-the~~  
14 ~~department."~~

-End-