CHAPTER NO. 242.

SENATE BILL NO. 152

INTRODUCED BY THOMAS, KOLSTAD, LOWE, McCALLUM, RYAN, GRAHAM

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

IN THE SENATE

January 18, 1979	Introduced and referred to Committee on Judiciary.
January 31, 1979	Committee recommend bill do pass as amended. Report adopted.
February 2, 1979	Printed and placed on members' desks.
February 3, 1979	Second reading, do pass.
February 5, 1979	Considered correctly engrossed.
February 6, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 7, 1979	Introduced and referred to Committee on Judiciary.
March 5, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 6, 1979	Second reading, concurred in.
March 8, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 9, 1979	Returned from second house. Concurred in as amended.
March 10, 1979	Second reading, amendments adopted.
March 12, 1979	Third reading, amendments adopted. Sent to enrolling.
	Reported correctly enrolled.

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6	FOR HEARING AND APPEAL WHEN A YOUTHFUL OFFENDER IS ALLEGED
7	TO HAVE VIOLATED HIS AFTERCARE AGREEMENT; AMENDING SECTION
8	53-30-229, MCA."
9	
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11	Section 1. Section 53-30-229, MCA, is amended to read:
12	#53-30-229. Hearing on alleged violation of aftercare
13	agreement right to appeal outcome. (1) When en-ellegation
14	ofevioletionof it is alleged by an aftercare counselor
15	that a youth has violated the terms and conditions of a
16	youthing his aftercare agreement is-mode-by-the-department-of
17	institutions, the youth shall be granted a hearing at or
16	near the site of the alleged violation or in the county
19	where the youth is residing within 10 days after the day
20	that-the-allegation-was-wade-to-determine+ notice has been
21	served on the youth or the youth is detained, whichever is
22	earlier.
23	tatwhether-the-youth-committed-the-violations-and
24	(b)whether-the-violation-is-of-such-s-nature-thathe

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was-reteased=									
(2)	The	youth.	upon	advice	of	an	attorney.	may	walve

- his right to a hearing.
 (3) With regard to this hearing, the youth shall be
- (a) writte 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 er-not the violation is of such a nature that he should be returned to the juvenile facility from which he was released or a different plan for treatment should be pursued by the department of institutions:
- (b) disclosure of the evidence against him and the facts constituting the alleged violation;
- (c) opportunity to be heard in person and to present witnesses and documentary evidence to controvert the evidence against him and to show that there are compelling reasons which justify or mitigate the violation:
- (d) opportunity to request that the referee subpoena witnesses:
- 22 (d)(e) the right to confront and cross-examine adverse
 23 witnesses;
 - (e)[f] the right to be represented by an attorney; and
- 25 tfj--e-record-of-the-hearingy-which--may--be--token--by

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INTRODUCED BILL

LC 0456/01 LC 0456/01

tope-recorder-and-transcribed-on-appeals

relied upon in reaching the final decision and the reasons

for the final decision will be provided by the referee.

(4)--Either--party--shell--have--the--power--to---issue

f5)(6) The department shall appoint a referee, who shall not be an employee of the department, to conduct the hearing. The county attorney shall assist the department in the conduct of the hearing as necessary. The department shall adopt rules necessary to effect a prompt and full review.

totici If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the elleged violation and that there are no compelling-reasons-which justified—or—mitigated—the—violation mitigating circumstances, the department—may-return—the—youth—to—the juvenile—facility—from—which—he—was-released he shall make a recommendation to the department for the placement of the youth— The referee—shall—give—a-written—decision—to—the youth—listing—the—reasons—for—his—decision—Einal—approval rests with the department.

(7)(6) Either—the—department—or—the <u>The</u> youth may appeal from the decision at the hearing to the district court of the county in which the sleeged-violation-occurred

hearing was held by serving and filing a notice of appeal with the court within 10 days of the referee's decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department shall not be altered except for abuse of discretion or manifest injustice.

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25 (8) If the decision is made to return the youth to the

- insititution from which he was released and the youth
- 2 appeals that decisions he shall await the outcome of the
- 3 appeal at such insititution.

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Approved by Committee on Judiciary

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6	w as-releasedu
7	(2) The youth, upon advice of an attorney, may waive
8	his right to a hearing.
9	(3) With regard to this hearing, the youth shall be
10	given:
11	(a) written notice of the alleged violation of his
12	aftercare agreement, including notice that \underline{OF} the purpose of
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18	institutions:
19	(b) disclosure of the evidence against him and the
20	facts constituting the alleged violation;
21	(c) opportunity to be heard in person and to present
22	witnesses and documentary evidence to controvert the
23	evidence against him and to show that there are compelling
24	reasons which justify or mitigate the violation;
25	(d) opportunity to request-that HAVE the referee

SB 0152/02 SB 0152/02

2	(d)[e] the right to confront and cross-examine adverse
3	witnesses;
4	(e)(f) the right to be represented by an attorney; and
5	(f)a-record-of-the-hearingy-whi chmaybetekenby
6	tape-recorder-and-transcribed-en-appeal+
7	(G) A RECORD OF THE HEARING: AND
8	for(H) notice that a written statement as to the
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12	(4)Citherpartyshellhovethepowertsissue
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18	THE HEARING. THE DEPARTMENT MAY REQUEST THE COUNTY
19	ATTORNEY'S ASSISTANCE AS NECESSARY. The department shall
20	adopt rules necessary to effect a prompt and full review.
21	(6)(5) If the referee finds, by a preponderance of the
22	evidence- that the youth did in fact commit the effected
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SB 152

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SB 0152/02

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SB 152

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46th tegislature S8 0152/03

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REFERENCE BILL

SB 0152/03

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SB 152

SB 0152/03

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46th Legislature SB 0152/03

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5	suchanaturethathe-should-be-returned-to-the-juvenil
6	facitity-from-which-he-was-released- <u>or-a-different-pianfa</u>
7	trestment::::showid:::ba:::purawed:::bx:::tba:::deportment:::s
B	inatitutiona;
9	(b) disclosure of the evidence against him and the
0	facts constituting the alleged violation;
ı	(c) opportunity to be heard in person and to present
2	witnesses and documentary evidence to controvert the
3	evidence against him and to show that there are compelline
4	reasons which justify-or <u>LUSIIFY_OR</u> mitigate the violation
5	idl_opportunity_to request-that HAYE the referen

-2- CORRECTED SB 152
REFERENCE BILL

SB 0152/03

LR

 SU.	ж	180	3_1	11	18.5.1	125.

,

fdfiel the right to confront and cross-examine adverse
witnesses:

felfl the right to be represented by an attorney; end

ffl-e-record-of-the-hearingv-which--may--be--taken--by
tope-recorder-end-transcribed-on-appealw

16) A RECORD OF THE HEARING: AND

fet(H) notice that a written statement as to the swidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the reference

12 (4)--Either--party--shall--have--the--power--to---issue
13 subseconds-to-witnesses

t51141 The department shall appoint a referee: who shall not be an employee of the department to conduct the hearing. The county-atterney-shall-assist-the-department-in the-conduct-of-the-bearing-as-necessary IN_THE_CONDUCT_OF

THE HEARING. THE DEPARTMENT MAY REQUEST THE COUNTY

ATTORNEY'S ASSISTANCE AS MECESSARY. The department shall adopt rules necessary to effect a prompt and full review.

tot151 If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the elleged violation end-that-there-are-no-compelling-reasons-which justified---or---mitigated---the---violation--mitigating circumstances, the-department-may-return-the--youth--to--the

juvenite-fecitity-free-which-he-was-released he shall make a

cecommundation to the department for the placement of the

youth- IN MAKING THIS RECOMMENDATION. THE REFEREE MAY

CONSIDER MITIGATING CIRCUMSTANCES. The-referee-shell-give-e

written-decision-to-the-youth-listing-the-reasons-for-his

decisions Final approval rests with the department AND MUST

BE MADE WITHIN 10 DAYS OF THE REFEREE'S RECOMMENDATION.

appeal from the decision at the hearing to the district court of the county in which the alleged violation—eccurred hearing was held by serving and filing a notice of appeal with the court within 10 days of the referee's DEPARIMENT'S decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeals. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department shall not be altered except for abuse of discretion or manifest injustice.

the reference restriction DEPARTHENT'S decision, a youth may not be detained except when his detention or care is required to protect the person or property of the youth or of others or

\$8 0152/03

he may abscond or be removed from the community in-which-the alleged--violation--occurred. Procedures for taking into custody and detention of a youth charged with violation of his aftercare agreement shall be as provided in 41-5-302 and 41-5-306y-except-that-detention-pending-a-hearing-on-alleged violation--may--not--be--for-longer-than-72-hours-unless-the hearing-time-is-extendedy-not-to-exceed-5--additional--daysy by--the--youth--court--upon--stipulation-of-the-youth-or-the youth-s-counsel-and-the-state.

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(6) If the decision is made to return the youth to the institution from which he was released and the youth appeals that decisions he shall await the outcome of the appeal at such institution."

March 5, 1979

Judiciary Committee amendments to SENATE BILL NO. 152.

1. Page 2, line 24.
Following: "er"
Insert: "justify or"

2. Page 4, line 6.
Following: "department"
Insert: "and must be made within 10 days of the referee's
recommendation"

3. Page 4, line 11.
Following: "of the"
Strike: "referee's"
Insert: "department's"

4. Page 4, line 22.
Following: "the"
Strike: "referee's written"
Insert: "department's"

And as amended, be concurred in.