

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.

1 *Senate* BILL NO. *152*
 2 INTRODUCED BY *Thomas Robert Four Makallum*
 3 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS *Ryan*
 4 *Latham*

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE PROCEDURE
 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 an allegation
 14 of a violation of it is alleged by an aftercare counselor
 15 that a youth has violated the terms and conditions of a
 16 youth's his aftercare agreement ~~is made by the department of~~
 17 institutions, the youth shall be granted a hearing at or
 18 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 made to determine~~ notice has been
 21 served on the youth or the youth is detained, whichever is
 22 earlier.

23 ~~(a) whether the youth committed the violation; and~~
 24 ~~(b) whether the violation is of such a nature that he~~
 25 ~~should be returned to the juvenile facility from which he~~

1 ~~was released;~~
 2 (2) The youth, upon advice of an attorney, may waive
 3 his right to a hearing.
 4 (3) With regard to this hearing, the youth shall be
 5 given:
 6 (a) written notice of the alleged violation of his
 7 aftercare agreement, including notice that the purpose of
 8 the hearing is to determine whether he has committed the
 9 violation and, if so, whether or not the violation is of
 10 such a nature that he should be returned to the juvenile
 11 facility from which he was released or a different plan for
 12 treatment should be pursued by the department of
 13 institutions;
 14 (b) disclosure of the evidence against him and the
 15 facts constituting the alleged violation;
 16 (c) opportunity to be heard in person and to present
 17 witnesses and documentary evidence to controvert the
 18 evidence against him and to show that there are compelling
 19 reasons which justify or mitigate the violation;
 20 (d) opportunity to request that the referee subpoena
 21 witnesses;
 22 ~~(e) the right to confront and cross-examine adverse~~
 23 ~~witnesses;~~
 24 ~~(f) the right to be represented by an attorney; and~~
 25 ~~(g) a record of the hearing, which may be taken by~~

~~tape-recorder-and-transcribed-on-appeal.~~

(g) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the referee.

~~(4) Either party shall have the power to issue subpoenas to witnesses.~~

(5)(4) 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.

(6)(5) If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the alleged 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.~~ Final approval rests with the department.

~~(7)(6)~~ (6) Either ~~the department or the~~ the youth may appeal from the decision at the hearing to the district court of the county in which the ~~alleged 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.

~~(8)(7)~~ (7) Pending the hearing on a violation and pending the referee's written 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 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 41-5-306 ~~except that detention pending a hearing on alleged violation may not be for longer than 72 hours unless the hearing time is extended, not to exceed 5 additional days, by the youth court upon stipulation of the youth or the youth's counsel and the state.~~

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

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2 appeals that decision, he shall await the outcome of the
3 appeal at such insitution."

-End-

SB 152

Approved by Committee
on Judiciary

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BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE PROCEDURE
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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.

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his right to a hearing.

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(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 HAVE the referee

1 subpoena witnesses
 2 ~~(d)(a)~~ 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 hearing which may be taken by
 6 tape recorder and transcribed on appeal.
 7 (G) A RECORD OF THE HEARING: AND
 8 (g)(H) notice that a written statement as to the
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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)(3)~~ If the referee finds, by a preponderance of the
 22 evidence, that the youth did in fact commit the alleged
 23 violation and that there are no compelling reasons which
 24 justified or mitigated the violation mitigating
 25 circumstances, the department may return the youth to the

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 3 ~~youth. IN MAKING THIS RECOMMENDATION, THE REFEREE MAY~~
 4 ~~CONSIDER MITIGATING CIRCUMSTANCES. The referee shall give a~~
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 7 ~~(7)(6)~~ Either the department or the youth may
 8 appeal from the decision at the hearing to the district
 9 court of the county in which the alleged violation occurred
 10 hearing was held by serving and filing a notice of appeal
 11 with the court within 10 days of the referee's decision. The
 12 youth may obtain a written transcript of the hearing from
 13 the department by giving written notice of appeal. The
 14 district court, upon receipt of a notice of appeal, shall
 15 order the department to promptly certify to the court a
 16 record of all proceedings before the department and shall
 17 proceed to a prompt hearing on the appeal based upon the
 18 record on appeal. The decision of the department shall not
 19 be altered except for abuse of discretion or manifest
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10 institution from which he was released and the youth
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12 appeal at such institution."

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~~(a) whether the youth committed the violation; and
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(2) The youth, upon advice of an attorney, may waive his right to a hearing.

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6 tape recorder and transcribed on appeal.

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8 ~~(a)(1)~~ notice that a written statement as to the
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~~(7)(6) Either the department or the youth may appeal from the decision at the hearing to the district court of the county in which the alleged violation occurred hearing was held by serving and filing a notice of appeal with the court within 10 days of the referee's DEPARTMENT'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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-End-

HOUSE OF REPRESENTATIVES

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.