

HOUSE BILL NO. 628

INTRODUCED BY HARPER, O'CONNELL

IN THE HOUSE

February 3, 1983	Introduced and referred to Committee on Judiciary.
February 10, 1983	Committee recommend bill do pass. Report adopted.
February 11, 1983	Bill printed and placed on members' desks.
February 12, 1983	Second reading, do pass.
February 14, 1983	Considered correctly engrossed.
February 15, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 16, 1983	Introduced and referred to Committee on Judiciary.
March 25, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1983	Second reading, concurred in as amended.
March 28, 1983	Third reading, concurred in. Ayes, 46; Noes, 0.

IN THE HOUSE

March 28, 1983

Returned to House with
amendments.

April 1, 1983

Second reading, amendments
concurred in.

April 4, 1983

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 628
 2 INTRODUCED BY Harper & Russell

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PERSON
 5 WHO IS NOT INFORMED OF HIS RIGHT TO APPEAL A COURT ORDER
 6 FINDING HIM TO BE SERIOUSLY MENTALLY ILL AND TO WHOM THE
 7 REMEDY OF HABEAS CORPUS IS UNAVAILABLE MAY COMMENCE A
 8 PROCEEDING FOR REVIEW OF THAT ORDER IN THE SUPREME COURT
 9 WITHIN 5 YEARS OF THE ENTRY OF SUCH ORDER; SPECIFYING THE
 10 CONTENT OF A PETITION FOR REVIEW; SPECIFYING THE GROUNDS FOR
 11 RELIEF THAT MAY BE RAISED AND HOW PROCEEDINGS ON THE
 12 PETITION ARE TO BE CONDUCTED BY THE SUPREME COURT; AMENDING
 13 SECTION 53-21-131, MCA."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 53-21-131, MCA, is amended to read:

17 "53-21-131. Appeal Review procedure -- appeal and
 18 postorder relief. (1) Appellate review of any order of
 19 short-term evaluation and treatment or long-term commitment
 20 may be had by appeal to the supreme court of Montana in the
 21 manner as other civil cases. The patient shall not be
 22 released pending appeal unless ordered by the court. The
 23 appeal shall have priority above all other matters before
 24 the supreme court.

25 (2) A person who was not informed of his right to

1 appeal under subsection (1) and to whom the remedy of habeas
 2 corpus is unavailable may file a petition for postorder
 3 relief in accordance with the provisions of [sections 2
 4 through 4]."

5 NEW SECTION. Section 2. Petition for postorder relief
 6 -- time and manner of filing. (1) A person who was not
 7 informed of his right to appeal under 53-21-131(1), as
 8 required by 53-21-114 and 53-21-168, and to whom the remedy
 9 of habeas corpus is unavailable may at any time within 5
 10 years of the date of the order committing him or ordering
 11 other treatment or disposition authorized by law, file a
 12 verified petition for postorder relief.

13 (2) The petition must be filed with the clerk of the
 14 supreme court, who shall docket the petition upon its
 15 receipt and bring it promptly to the attention of the court.

16 NEW SECTION. Section 3. Content of petition. The
 17 petition must identify the proceeding in which the
 18 petitioner was committed or ordered to undergo treatment or
 19 in which any other disposition was made, give the date of
 20 the rendition of the order complained of, and clearly set
 21 forth the alleged violation or violations. The petition must
 22 have attached thereto affidavits, records, or other evidence
 23 supporting its allegations or must state why the same are
 24 not attached. It must identify any previous proceedings that
 25 the petitioner may have taken to secure relief from the

1 order complained of. The petition must be accompanied by a
2 supporting memorandum, including appropriate arguments and
3 citations, and discussion of authorities.

4 NEW SECTION. Section 4. What grounds for relief
5 waived if not raised. All grounds for relief claimed by a
6 petitioner under [sections 1 through 3] must be raised in
7 his original or amended petition. Any grounds not so raised
8 are waived unless the court, on hearing a subsequent
9 petition, finds grounds for relief asserted therein which
10 could not reasonably have been raised in the original or
11 amended petition.

12 NEW SECTION. Section 5. Proceedings on the petition.
13 (1) Unless the petition and the files and records of the
14 case conclusively show that the petitioner is entitled to no
15 relief, the court shall cause notice thereof to be served
16 upon the county attorney in the county in which the order
17 complained of was made and order him to file a responsive
18 pleading to the petition. Following its review of the
19 responsive pleading, the court may dismiss the petition as a
20 matter of law for failure to state a claim for relief or it
21 may grant a prompt hearing thereon, determine the issue, and
22 make findings of fact and conclusions with respect thereto.

23 (2) The court may receive proof by affidavits,
24 depositions, oral testimony, or other evidence. In its
25 discretion the court may order the petitioner brought before

1 the court for the hearing.

2 (3) If the court finds in favor of the petitioner, it
3 shall enter an appropriate order with respect to the order
4 complained of in the former proceedings and such
5 supplementary orders as may be necessary and proper.

6 NEW SECTION. Section 6. Codification instruction.
7 Sections 2 through 5 are intended to be codified as an
8 integral part of Title 53, chapter 21, part 1, and the
9 provisions of Title 53, chapter 21, apply to sections 2
10 through 5.

-End-

STATE OF MONTANA

REQUEST NO. 327-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 7, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 627 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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 627 amends Section 2-18-104, MCA, to increase from 5 to 10 the number of members of the Public Service Commission personal staff that are exempt from certain provisions of the state employee classification and pay plan.

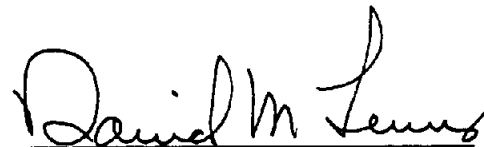
ASSUMPTIONS:

- 1) To bring the number of exemptions in line with all other elected officials.
- 2) No additional FTE's would be hired. The requested funds would upgrade present salaries in order to attract and retain competent and professional staff.
- 3) A non-quantifiable amount of savings to the state could be realized in the training of new employees if the present staff is retained.

FISCAL IMPACT:

	<u>FY 84</u>	<u>FY 85</u>
General Fund Cost	\$ <u>20,000</u>	\$ <u>20,000</u>

FISCAL NOTE 12:D/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-10-83

Approved by Committee
on Judiciary

INTRODUCED BY House BILL NO. 628
Hayes O. Russell

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PERSON WHO IS NOT INFORMED OF HIS RIGHT TO APPEAL A COURT ORDER FINDING HIM TO BE SERIOUSLY MENTALLY ILL AND TO WHOM THE REMEDY OF HABEAS CORPUS IS UNAVAILABLE MAY COMMENCE A PROCEEDING FOR REVIEW OF THAT ORDER IN THE SUPREME COURT WITHIN 5 YEARS OF THE ENTRY OF SUCH ORDER; SPECIFYING THE CONTENT OF A PETITION FOR REVIEW; SPECIFYING THE GROUNDS FOR RELIEF THAT MAY BE RAISED AND HOW PROCEEDINGS ON THE PETITION ARE TO BE CONDUCTED BY THE SUPREME COURT; AMENDING SECTION 53-21-131, MCA."

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

Section 1. Section 53-21-131, MCA, is amended to read:

"53-21-131. ~~Appeal~~ Review procedure ~~-- appeal and postorder relief.~~ (1) Appellate review of any order of short-term evaluation and treatment or long-term commitment may be had by appeal to the supreme court of Montana in the manner as other civil cases. The patient shall not be released pending appeal unless ordered by the court. The appeal shall have priority above all other matters before the supreme court.

(2) ~~A person who was not informed of his right to~~

~~appeal under subsection (1) and to whom the remedy of habeas corpus is unavailable may file a petition for postorder relief in accordance with the provisions of [sections 2 through 4]."~~

NEW SECTION. Section 2. Petition for postorder relief -- time and manner of filing. (1) A person who was not informed of his right to appeal under 53-21-131(1), as required by 53-21-114 and 53-21-168, and to whom the remedy of habeas corpus is unavailable may at any time within 5 years of the date of the order committing him or ordering other treatment or disposition authorized by law, file a verified petition for postorder relief.

(2) The petition must be filed with the clerk of the supreme court, who shall docket the petition upon its receipt and bring it promptly to the attention of the court.

NEW SECTION. Section 3. Content of petition. The petition must identify the proceeding in which the petitioner was committed or ordered to undergo treatment or in which any other disposition was made, give the date of the rendition of the order complained of, and clearly set forth the alleged violation or violations. The petition must have attached thereto affidavits, records, or other evidence supporting its allegations or must state why the same are not attached. It must identify any previous proceedings that the petitioner may have taken to secure relief from the

SECOND READING

1 order complained of. The petition must be accompanied by a
2 supporting memorandum, including appropriate arguments and
3 citations, and discussion of authorities.

4 NEW SECTION. Section 4. What grounds for relief
5 waived if not raised. All grounds for relief claimed by a
6 petitioner under [sections 1 through 3] must be raised in
7 his original or amended petition. Any grounds not so raised
8 are waived unless the court, on hearing a subsequent
9 petition, finds grounds for relief asserted therein which
10 could not reasonably have been raised in the original or
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12 NEW SECTION. Section 5. Proceedings on the petition.
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14 case conclusively show that the petitioner is entitled to no
15 relief, the court shall cause notice thereof to be served
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17 complained of was made and order him to file a responsive
18 pleading to the petition. Following its review of the
19 responsive pleading, the court may dismiss the petition as a
20 matter of law for failure to state a claim for relief or it
21 may grant a prompt hearing thereon, determine the issue, and
22 make findings of fact and conclusions with respect thereto.

23 (2) The court may receive proof by affidavits,
24 depositions, oral testimony, or other evidence. In its
25 discretion the court may order the petitioner brought before

1 the court for the hearing.

2 (3) If the court finds in favor of the petitioner, it
3 shall enter an appropriate order with respect to the order
4 complained of in the former proceedings and such
5 supplementary orders as may be necessary and proper.

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7 Sections 2 through 5 are intended to be codified as an
8 integral part of Title 53, chapter 21, part 1, and the
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8 integral part of Title 53, chapter 21, part 1, and the
9 provisions of Title 53, chapter 21, apply to sections 2
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-End-

March 25, 1983

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 628 be amended as follows:

1. Title, line 5 through 13.

Strike: lines 5 through 13 in their entirety

Insert: "INVOLUNTARILY DETAINED OR EXAMINED, OR SUBJECT TO AN ORDER FOR SHORT-TERM TREATMENT OR LONG-TERM CARE AND TREATMENT UNDER TITLE 53, CHAPTER 21, MCA, MUST BE GIVEN NOTICE IN WRITING OF HIS RIGHT TO APPEAL; PROVIDING FOR APPEALS TO BE FILED WITHIN 90 DAYS OF SERVICE OF NOTICE; AMENDING SECTIONS 53-21-114 AND 53-21-131, MCA."

2. Pages 1 through 4.

Strike: all of the bill following the enacting clause

Insert: "Section 1. Section 53-21-114, MCA, is amended to read:

"53-21-114. Notice of rights to be given. (1) Whenever a person is involuntarily detained or is examined pursuant to 53-21-121 through 53-21-126, the person shall, within 3 days of such detention or examination, be informed in writing by the county attorney of his constitutional rights and his rights under this part.

(2) Every respondent subject to an order for short-term treatment or long-term care and treatment shall be advised in writing of his right to appeal the order by the court at the conclusion of any hearing the result of which such an order may be entered."

Section 2. "Section 53-21-131, MCA, is amended to read:

"53-21-131. Appeal procedure. Appellate review of any order of short-term evaluation and treatment or long-term commitment may be had by appeal to the supreme court of Montana in the manner as other civil cases, except that the appeal may be taken at any time within 90 days of the actual service of the written notice of the right to appeal required by 53-21-114 or within 90 days after discharge, whichever is later. The patient shall not be released pending appeal unless ordered by the court. The appeal shall have priority above all other matters before the supreme court.""

March 28, 1983

SENATE COMMITTEE OF THE WHOLE AMENDMENT

That House Bill No. 628, Senate Standing Committee Report, Amendment No. 2, be amended as follows:

1. Section 1

Strike: subsection (1)

Insert: "(1) Whenever a person is involuntarily detained or is examined pursuant to 53-21-121 through 53-21-126, the person shall at the time of detention or examination be informed of his constitutional rights and his rights under this part. Within 3 days of such detention or examination he must also be informed in writing by the county attorney of such rights."

HOUSE BILL NO. 628

INTRODUCED BY HARPER, O'CONNELL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PERSON WHO IS NOT INFORMED OF HIS RIGHT TO APPEAL A COURT ORDER FINDING HIM TO BE SERIOUSLY MENTALLY ILL AND TO WHOM THE REMEDY OF HABEAS CORPUS IS UNAVAILABLE MAY COMMENCE A PROCEEDING FOR REVIEW OF THAT ORDER IN THE SUPREME COURT WITHIN 5 YEARS OF THE ENTRY OF SUCH ORDER, SPECIFYING THE CONTENT OF A PETITION FOR REVIEW, SPECIFYING THE GROUNDS FOR RELIEF THAT MAY BE RAISED AND HOW PROCEEDINGS ON THE PETITION ARE TO BE CONDUCTED BY THE SUPREME COURT, AMENDING SECTION 53-21-131, MCA, INVOLUNTARILY DETAINED OR EXAMINED OR SUBJECT TO AN ORDER FOR SHORT-TERM TREATMENT OR LONG-TERM CARE AND TREATMENT UNDER TITLE 53, CHAPTER 21, MCA, MUST BE GIVEN NOTICE IN WRITING OF HIS RIGHT TO APPEAL; PROVIDING FOR APPEALS TO BE FILED WITHIN 90 DAYS OF SERVICE OF NOTICE; AMENDING SECTIONS 53-21-114 AND 53-21-131, MCA."

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

(Refer to Third Reading Bill)

Strike everything after the enacting clause and insert:

Section 1. Section 53-21-114, MCA, is amended to read:

"53-21-114. Notice of rights to be given. (1) Whenever

a person is involuntarily detained or is examined pursuant

to 53-21-121 through 53-21-126, the person shall, within 3 days of such detention or examination, be informed in writing by the county attorney of his constitutional rights and his rights under this part. (1) WHENEVER A PERSON IS INVOLUNTARILY DETAINED OR IS EXAMINED PURSUANT TO 53-21-121 THROUGH 53-21-126, THE PERSON SHALL AT THE TIME OF DETENTION OR EXAMINATION BE INFORMED OF HIS CONSTITUTIONAL RIGHTS AND HIS RIGHTS UNDER THIS PART. WITHIN 3 DAYS OF SUCH DETENTION OR EXAMINATION HE MUST ALSO BE INFORMED IN WRITING BY THE COUNTY ATTORNEY OF SUCH RIGHTS.

(2) Every respondent subject to an order for short-term treatment or long-term care and treatment shall be advised in writing of his right to appeal the order by the court at the conclusion of any hearing the result of which such an order may be entered."

Section 2. Section 53-21-131, MCA, is amended to read:

"53-21-131. Appeal procedure. Appellate review of any order of short-term evaluation and treatment or long-term commitment may be had by appeal to the supreme court of Montana in the manner as other civil cases, except that the appeal may be taken at any time within 90 days of the actual service of the written notice of the right to appeal required by 53-21-114 or within 90 days after discharge, whichever is later. The patient shall not be released pending appeal unless ordered by the court. The appeal shall

- 1 have priority above all other matters before the supreme
- 2 court."

-End-