

HOUSE BILL NO. 161
INTRODUCED BY G. MATTHEWS
BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAW RELATING TO THE RIGHT OF A YOUTH TO WAIVE A PAROLE REVOCATION HEARING; AMENDING SECTION 52-5-129, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 52-5-129, MCA, is amended to read:

"52-5-129. Hearing on alleged violation of parole agreement -- waiver of hearing -- right to appeal outcome. (1) When it is alleged by a juvenile parole officer that a youth has violated the terms of the youth's parole agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier, unless the youth, upon advice of an attorney, waives the youth's right to a hearing. At the discretion of the hearings officer, this hearing may be held by means of interactive video transmission. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that the youth should be returned to a youth correctional facility or whether a different plan for custody and supervision of the youth should be pursued by the department of corrections.

(2) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when the youth's detention or care is required to protect the person or property of the youth or of others or when the youth may abscond or be removed from the community. The department shall determine the place and manner of detention pursuant to 41-5-348 and is responsible for the cost of the detention. Procedures for taking a youth into custody and detention of a youth charged with violation of the youth's parole agreement are as provided in 41-5-321.

(3) The youth, upon advice of an attorney, may waive the right to a hearing.

(4) With regard to this hearing, the youth must be given:

(a) written notice of the alleged violation of the parole agreement, including notice of the purpose of the hearing;

(b) a disclosure of the evidence against the youth and the facts constituting the alleged violation;

(c) the opportunity to be heard in person or by interactive video transmission and to present witnesses and documentary evidence to controvert the evidence against the youth and to show that there are compelling reasons that justify or mitigate the violation;

(d) the opportunity to have the hearings officer subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses in person or by means of interactive video transmission;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) 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 hearings officer.

(5) The department shall provide a hearings officer to conduct the hearing. The department shall adopt rules necessary to effect a prompt and full review.

(6) (a) If The hearings officer shall make a decision for the placement of the youth if:

(i) after a hearing the hearings officer finds, by a preponderance of the evidence, that the youth did in fact commit the violation;~~the hearings officer shall make a decision for the placement of the youth; or~~

(ii) the youth signs a waiver of the hearing that acknowledges that the youth has violated the terms of the youth's parole agreement.

(b) In making ~~this~~ a placement decision, the hearings officer may consider mitigating or aggravating circumstances.

(c) The youth or the youth's attorney may appeal the hearings officer's decision to the department director. The appeal must be made in writing within 5 days of the hearing. The department director or designee shall grant or deny the appeal within 5 days of receipt of the appeal.

(7) The youth may appeal the decision of the department director to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department director'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 may not be altered except for abuse of discretion or manifest injustice.

(8) If the decision made under subsection (6) is to return the youth to a youth correctional facility and the youth appeals that decision, the youth shall await the outcome of the appeal at the facility.

(9) If a decision is made under subsection (6) to revoke the parole of a youth who was placed in and released from an alternative facility under 41-5-355 because of overcrowding in a state youth correctional facility, the youth may be placed in a state youth correctional facility if the state youth correctional facility is no longer overcrowded."

NEW SECTION. **Section 2. Effective date.** [This act] is effective July 1, 2003.

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