

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
February 2, 1977

The meeting of this committee was called to order on the above date in Room 442 of the State Capitol Building at 9:30 a.m. by Senator Turnage, Chairman.

ROLL CALL:

All members of the committee were present for this meeting.

WITNESSES APPEARING TO TESTIFY:

Senator Hazelbaker - District 41  
Dean Zinnicker - Montana Association of Counties  
Joan Uda - Office of Budget & Program Planning, staff attorney  
Tom Boland, Board of Visitors  
Tom Honzel, Deputy County Attorney of Lewis & Clark County -  
representing the County Attorneys Association  
Virginia G. Griffing - Attorney for Board of Crime Control  
Nancy Lien - Mental Health Advisory Council  
Nick Roterling - Dept. of Institutions, Chief Counsel

CONSIDERATION OF SENATE BILL 153:

Senator Hazelbaker, District 41, chief sponsor of this bill, told the committee that he felt this legislation was necessary, and he then read a letter from Judge Nat Allen of Musselshell County regarding their problems in paying for transportation and the care of mentally incompetent persons by their county. (See Exhibit 1)

Tom Honzel, representing the County Attorneys Association, spoke as a proponent of SB 153, saying that he believes that this bill is well worth consideration as it is financially impossible for some counties to bear these expenses.

Another proponent of SB 153 appearing was Dean Zinnicker, representing the Montana Association of Counties, who said that many counties could not stand the expense of evaluations and transportation for persons who are mentally incompetent.

At this time Senator Hazelbaker presented the committee with a letter from Robert L. Deschamps III, Missoula County Attorney, in favor of this bill. (See Exhibit #2)

There being no more proponents who wished to testify, the Chairman allowed the proponents to state their views.

The first opponent appearing was Nick Roterling, Chief Counsel for the Department of Institutions, who said they were primarily against SB 153 because of the costs to the Department of Institutions. He told the committee that during 1976 they had 150 evaluations at a cost of \$750 each. He further said that he believes that the way the bill is drafted the department would have to reimburse the

county sheriffs for mileage travelled with these patients as the Warm Springs State Hospital budget does not cover this expense. He said that the hospital authorities at Warm Springs recommend that the evaluations be speeded up and that they not use the maximum security wing.

The next opponent appearing was Joan Uda, staff attorney for the Office of Budget and Program Planning, who opposed the bill for basically the same reasons as Mr. Rotering. She also said that use of the mental health centers around the state should be encouraged rather than send them all to Warm Springs for evaluations. She further said that there should be a fiscal note on this bill.

Tom Boland, representing the Board of Visitors, was the next opponent to testify. He said that he agreed largely with Mr. Rotering and Joan Uda, but that the cost of evaluations was now closer to \$1,440 than the \$750 cost that Mr. Rotering quoted. (Exhibit #3)

Nancy Lien, representing the Mental Health Association of Montana, next spoke as an opponent of S.B. 153, saying that they support evaluation costs being borne by the county to encourage evaluations being made at community mental health facilities. Her testimony consisted of reading from the text of Recommendation #47 in the report of the Mental Health Advisory Council.

In his closing remarks, Senator Hazelbaker said that S.B. 153 was just to help the small counties.

There were no more opponents or proponents present on S.B. 153.

At this time Chairman Turnage asked the secretary to obtain a fiscal note on S.B. 153 by contacting the office of the President of the Senate. He also requested that the secretary get 11 copies of H.B. 532 for the committee and Nick Rotering to get figures on costs. Letter and figures received. (See Exhibit #4)

#### CONSIDERATION OF SENATE BILL 250:

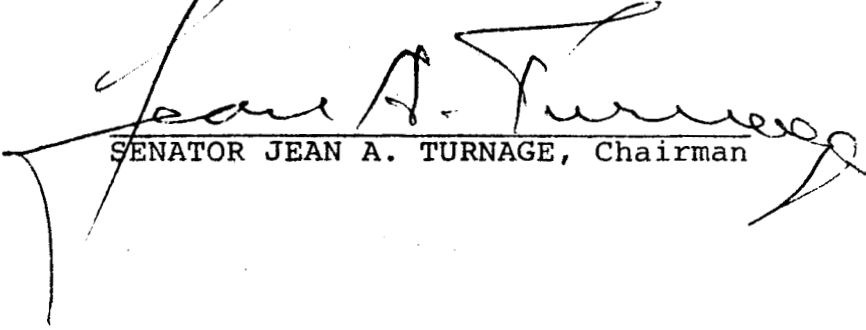
Senator Hazelbaker, the author of this bill, said that it was introduced at the request of the Board of Crime Control. He introduced Virginia Griffing, attorney for the Board of Crime Control, who explained the statement she had submitted to the committee (See Exhibit #1 on S.B. 250) which contained recommendations for amendments. The committee questioned some of the amendments and considered the ones she had offered after Ms. Griffing was excused.

#### DISPOSITION OF SENATE BILL 250:

Senator Murray moved to strike the new material on page 2, section 1, subsection (4), lines 15 through 18, and 19. The motion carried unanimously. At this time, Joan Mayer from the Legislative Council was authorized to make 2 small amendments to make the bill conform.

Senator Regan moved that S.B. 250 as amended DO PASS. The motion carried unanimously.

There being no further business before the committee at this time, the committee adjourned at 11:00 a.m.



SENATOR JEAN A. TURNAGE, Chairman

## JUDICIARY COMMITTEE

Date 2-2-77

[illegible]

RECEIVED

MAY 23 1976

CHAMBERS OF  
Judge Fourteenth Judicial District

Meagher, Wheatland, Golden Valley and Musselshell Counties

MONTANA LEGISLATIVE  
COUNCIL

CHAMBERS AT  
ROUNDUP, MONTANA 59072  
PHONE 323-1701

DON W. LARSEN, Court Reporter

NAT ALLEN, Judge

May 24, 1976

Montana Legislative Council  
Capitol Building  
Helena, Montana 59601

Re: Section 95-506 (4)

Gentlemen:

On July 4, 1975, Mr. Robert Kepley wrote a check for a 1964 Ford pickup to the owner for \$700.00, took the pickup and vanished. Of course the check bounced. On the 8th of December, 1975, we found Mr. Kepley and arrested him. When brought before the Court, his Attorney said he thought he was afflicted with a mental disorder. And at the time I remarked, "If this man is crazy, we are all crazy." Nevertheless, I sent him to Warm Springs.

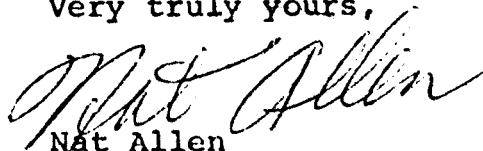
In the part of the report called "background," Warm Springs says: "Patient had many school problems and has the equivalent of a third grade education. He has been in mental hospitals in Texas, in the Federal Prisoners Medical Center in Springfield, Missouri, and the Alaska Psychiatric Institute at Anchorage, Alaska. He has evidently had electroshock therapy on previous occasions and is said to have been in a hospital in Fort Worth, Texas, because of a narcotic problem. Patient has had more than one sentence served in prison." Their diagnosis: Schizophrenia, paranoid type, chronic. Thus, they are keeping him there. And under the Section quoted above, they are charging this County \$14.27 a day. This is \$428.00 a month. And since his condition is chronic, there is no end in sight to this.

The question I want to ask now, isn't it outrageous that Musselshell County should pay \$428.00 a month to keep this man in Warm Springs and thus protect the rest of Montana and the nation from his check writing abilities and a host of other crimes that he commits?

As a matter of fact, the next guy who says he is crazy (and most of them do when charged with a serious crime), this Court will feel obliged to enter a dismissal of the charge, because Counties of this size simply cannot afford to have two or three in Warm Springs at these rates. And besides, it is an injustice that they should have to maintain them there, when everybody else in Montana and the nation get the benefit of this incarceration.

I enclose a copy of the bill Warm Springs sent to this County, in case you think I am kidding you. Something will have to be done with this Section, or it will result in almost a complete breakdown of law enforcement.

Very truly yours,

  
Nat Allen

NA/dl

cc: County Attorneys

Musselshell, Golden Valley District Judge

KEPLEY, Robert J.

3-36654

*Bill Change* 03-26-76 to 04-14-76

13 *days* 14.27

185.51

STATE OF MONTANA  
DEPARTMENT OF INSTITUTIONS  
WARM SPRINGS, MONTANA 59756

CARE AND  
MAINTENANCE  
BILLING

185.51

Clerk & Recorder  
Musselshell County Court House  
Roundup, Montana 59072

KEPLEY, Robert J.

TO INSURE CORRECT CREDIT TO YOUR ACCOUNT, RETURN THIS STUB WITH YOUR REMITTANCE  
TO THIS DEPARTMENT. MAKE ALL CHECKS AND MONEY ORDERS PAYABLE TO THE STATE TREASURER.

DATE	CHARGES	CREDITS	BALANCE
APR 30 '76	185.51		604.34

PLEASE PAY  
LAST AMOUNT  
IN THIS COLUMN

CREDITS MADE AFTER THE 20TH OF THE MONTH WILL APPEAR ON NEXT  
MONTHS BILLING.

DEPARTMENT OF INSTITUTIONS  
WARM SPRINGS, MONTANA

185.51

# FISCAL NOTE REQUIRED

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_

3 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE  
4 EXPENSES OF SENDING A CRIMINAL DEFENDANT WHOSE MENTAL  
5 FITNESS IS AN ISSUE TO THE CUSTODY OF THE SUPERINTENDENT OF  
6 WARM SPRINGS STATE HOSPITAL, OF KEEPING HIM IN AN  
7 INSTITUTION, AND OF BRINGING HIM BACK ARE TO BE BORNE BY THE  
8 DEPARTMENT OF INSTITUTIONS IN THE FIRST INSTANCE; AMENDING  
9 SECTION 95-506, R.C.M. 1947."  
10

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 95-506, R.C.M. 1947, is amended to  
14 read as follows:

15 "95-506. Determination of fitness to proceed -- effect  
16 of finding of unfitness -- proceedings if fitness is  
17 regained -- ~~expenses~~. (1) When the defendant's fitness to  
18 proceed is drawn in question, the issue shall be determined  
19 by the court. If neither the county attorney nor counsel for  
20 the defendant contests the finding of the report filed under  
21 section 95-507, the court may make the determination on the  
22 basis of the report. If the finding is contested, the court  
23 shall hold a hearing on the issue. If the report is received  
24 in evidence upon the hearing, the parties have the right to  
25 summon and cross-examine the psychiatrists who joined in the

1 report and to offer evidence upon the issue.

2 (2) If the court determines that the defendant lacks  
3 fitness to proceed, the proceeding against him shall be  
4 suspended, except as provided in subsection (3) of this  
5 section, and the court shall commit him to the custody of  
6 the superintendent of Warm Springs state hospital, to be  
7 placed in an appropriate institution of the department of  
8 institutions for so long as the unfitness endures. When the  
9 court, on its own motion or upon the application of the  
10 superintendent of Warm Springs state hospital, or the county  
11 attorney, or the defendant or his legal representative,  
12 determines, after a hearing if a hearing is requested, that  
13 the defendant has regained fitness to proceed, the  
14 proceeding shall be resumed. If, however, the court is of  
15 the view that so much time has elapsed since the commitment  
16 of the defendant that it would be unjust to resume the  
17 criminal proceedings, the court may dismiss the charge and  
18 may order the defendant to be discharged, or, subject to the  
19 law governing the civil commitment of persons suffering from  
20 mental disease or defect, order the defendant committed to  
21 an appropriate institution of the department of  
22 institutions.

23 (3) The fact that the defendant is unfit to proceed  
24 does not preclude any legal objection to the prosecution  
25 which is susceptible to fair determination prior to trial



# MISSOULA COUNTY

OFFICE OF THE ATTORNEY  
MISSOULA COUNTY COURTHOUSE  
MISSOULA, MONTANA 59801  
TELEPHONE: (406) 543-3111

**ROBERT L. DESCHAMPS III**  
COUNTY ATTORNEY

January 19, 1977

Senator Frank Hazelbaker  
Capitol Station  
Helena, MT 59601

Dear Frank:

the other day you mentioned to me that you were going to introduce a bill which would make the State Department of Institutions financially liable for the costs of criminal defendants being evaluated at Warm Springs. You mentioned that the costs being incurred in these evaluations were becoming burdensome to the smaller counties.

This morning I received bills from Warm Springs for three criminal defendants that we had over there in December and I thought you would be interested in noting the amounts of the bills. The bills are attached and you will see that in one case the amount of over \$3,000, the 2nd case the amount is over \$2,000 and the 3rd case the amount is over \$1,000. In total we have expended in excess of \$12,000 for Warm Springs fees already this year, in addition to the bills attached. Obviously these financial burdens are troublesome for the larger counties as well as the smaller ones and I thought these bills might help in arguing your bill in the Senate.

If I can be of further assistance, please contact me.

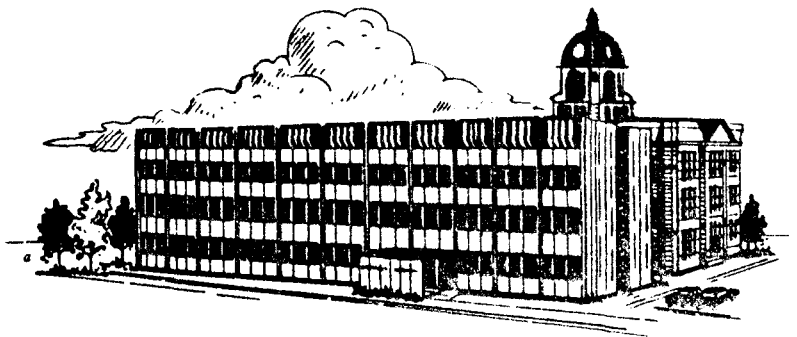
Sincerely,

*Robert L. Deschamps III*  
Robert L. Deschamps III  
County Attorney

RLD:hr

Enclosures

cc: Tom Honzel  
Evon Anderson



STATE OF MONTANA  
DEPARTMENT OF INSTITUTIONS  
WARM SPRINGS, MONTANA 59756

CARE AND  
MAINTENANCE  
BILLING

RECEIVED

JA

MISSOULA

By

Clerk & Recorder  
Missoula County Court House  
Missoula, Mt. 59801

BOWERS, Clayton

TO INSURE CORRECT CREDIT TO YOUR ACCOUNT, RETURN THIS STUB WITH YOUR REMITTANCE  
TO THIS DEPARTMENT. MAKE ALL CHECKS AND MONEY ORDERS PAYABLE TO: THE STATE TREASURER.

DATE	CHARGES	CREDITS	BALANCE
DEC 31'76	1,036.25		1,036.25

A  
PLEASE PAY  
LAST AMOUNT  
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CREDITS MADE AFTER THE 20TH OF THE MONTH WILL APPEAR ON NEXT  
MONTHS BILLING.



DEPARTMENT OF INSTITUTIONS  
WARM SPRINGS, MONTANA

STATE OF MONTANA  
DEPARTMENT OF INSTITUTIONS  
WARM SPRINGS, MONTANA 59756

CARE AND  
MAINTENANCE  
BILLING

Clerk & Recorder  
Missoula County Court House  
Missoula, Mont. 59801

SPELMAN, Hayes S.

TO INSURE CORRECT CREDIT TO YOUR ACCOUNT, RETURN THIS STATE WITH YOUR REMITTANCE  
TO THIS DEPARTMENT. MAKE ALL CHECKS AND MONEY ORDERS PAYABLE TO: THE STATE TREASURER.

DATE	CHARGES	CREDITS	BALANCE
DEC 31'76	709.02		2,265.95

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LAST AMOUNT  
IN THIS COLUMN

CREDITS MADE AFTER THE 20TH OF THE MONTH WILL APPEAR ON NEXT  
MONTHS BILLING.



DEPARTMENT OF INSTITUTIONS  
WARM SPRINGS, MONTANA

STATE OF MONTANA  
DEPARTMENT OF INSTITUTIONS  
- WARM SPRINGS, MONTANA 59756

CARE AND  
MAINTENANCE  
BILLING

Clerk & Recorder  
Missoula County Court House  
Missoula, Mont. 59801

MACE, Gerald Stanley

TO INSURE CORRECT CREDIT TO YOUR ACCOUNT, RETURN THIS STUB WITH YOUR REMITTANCE  
TO THIS DEPARTMENT. MAKE ALL CHECKS AND MONEY ORDERS PAYABLE TO: THE STATE TREASURER.

DATE	CHARGES	CREDITS	BALANCE
DEC 31 76	709.02		3,082.32
PLEASE PAY LAST AMOUNT IN THIS COLUMN			

CREDITS MADE AFTER THE 20TH OF THE MONTH WILL APPEAR ON NEXT  
MONTHS BILLING.



DEPARTMENT OF INSTITUTIONS  
WARM SPRINGS, MONTANA



STATE OF MONTANA  
Office of the Governor  
**Mental Disabilities Board of Visitors**  
Capitol Building - Helena, Montana 59601

(S.B. 153)

Thomas L. Judge  
Governor

February 2, 1977

To: Senate Judiciary Committee

From: Tom Boland, Board of Visitors

RE: S.B. 153

In the interest of brevity I wish simply to call the Committee's attention to page four of the Report of the Board of Visitors to the Forty-Fifth Montana Legislature and page thirtyfour of the Report of the Mental Health Advisory Council and urge this Committee to consider the recommendations offered in these two documents.

I attach copies of the pages cited above for the convenience of the Committee.

Thank you.

## RECOMMENDATIONS TO THE FORTY-FIFTH MONTANA LEGISLATURE

### A. AMENDMENTS TO MONTANA LAW

1. The Board of Visitors recommends that the Forty-Fifth Legislature appropriate funds to pay the expenses of court appointed responsible persons. The commitment and treatment laws (R.C.M.38-1201 et. seq. and 38-1301 et. seq.) envision an active role for responsible persons appointed to look after and, in some cases represent, the mentally disabled. That active role has not been achieved primarily because responsible persons cannot be located by the Courts of Montana, and when they are located and appointed, there is no provision for the payment of their necessary expenses.

2. The Board recommends that the terms of the members of the Board of Visitors be set by law and staggered to provide for continuity as well as an orderly transition upon the expiration of those terms.

3. The Board recommends that all counties in Montana be required to participate in mental health center funding so that community mental health center services are available to all Montana citizens.

4. The Board of Visitors recommends that psychiatric evaluations ordered by District Courts pursuant to criminal charges and pursuant to juvenile court matters be shortened so that forensic evaluations for the criminal court and the juvenile court be done within 10 days of the court order.

Currently evaluations ordered during a criminal proceeding can last up to sixty days and evaluations ordered by a juvenile court can last up to 45 days.

There is widespread agreement among mental health professionals and judicial officials that psychiatric evaluations for forensic purposes could be conducted in much less time without compromising the scientific data.

The evaluations could be done in the community by private psychiatrists or the mental health center staff psychiatrists rather than by Warm Springs State Hospital. Local evaluations would save Counties the expense of the transportation to and from Warm Springs State Hospital as well as the expense of the two month evaluation at the hospital.

Shorter evaluation periods would benefit the judicial system as well as honor the individual's right to a speedy trial and the cost of such evaluations would be greatly reduced.

### B. PROGRAMMATIC RECOMMENDATIONS

1. The Board Recommends that the Musigbrod Building at Warm Springs State Hospital be closed immediately. Patients housed in Musigbrod are being denied their rights to privacy, dignity and to a humane psychological and physical environment in violation of Montana Law and of the United States Constitution. Many of the present residents of Musigbrod have a primary diagnosis of mental retardation and it is the opinion of the Board of Visitors that they should not have been placed at Warm Springs State Hospital in the first place.

47. *The cost of evaluating criminal defendants should be charged to the counties and the cost of treating such defendants should be charged to the state.*

The Council recommends that subsection 4 of 95-506, R.C.M., 1947, which states:

"The expenses of sending the defendant to the custody of the superintendent of the Montana state hospital, to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found, or the information filed, but the county may recover them from the estate of the defendant, if he has any, or from a town, city or county bound to provide for and maintain him elsewhere. "

be deleted and a new section entitled 95-509 be added which states,

"Responsibility for expenses of criminal commitments: (1) the expenses for evaluation of a criminal defendant, with respect to mental disease or defect or determination of fitness to proceed, detainment of the defendant during evaluation, sending the defendant to the custody of the superintendent of

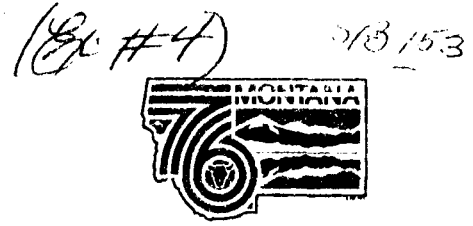
the Montana State Hospital, to be placed in an appropriate institution of the State Department of Institutions and bringing him back are chargeable to the county in which the indictment was found, or the information filed.

(2) The expenses of treatment of the defendant, in the custody of the superintendent of the Montana State Hospital, is chargeable to the state."

This revision (1) creates a statutory mandate for the state to pay only treatment costs, (2) encourages counties to seek evaluation of criminal defendants at community mental health facilities and find less expensive methods of criminal evaluation, (3) omits the provision whereby a criminal defendant, or his estate, can be held responsible for evaluation and treatment costs.

State of Montana

Department of Institutions



GOVERNOR  
THOMAS L. JUDGE

DIRECTOR  
ROBERT H. MATTSO



BOARD MEMBERS  
ZELLA A. JACOBSON, GREAT FALLS  
ELDON E. KUHN, BILLINGS  
WILLIS M. MCKEON, MALTA  
ROBERT J. PALLO, KALISPELL  
JOHN W. STRIZICH, M.D., HELENA

Helena, 59601

February 3, 1977

Honorable Jean A. Turnage, Chairman  
Senate Judiciary Committee  
Capitol Station  
Helena, Montana 59601

Re: Senate Bill 153

Dear Senator Turnage:

Pursuant to your request in the Committee Hearing on February 2nd on the above bill, I have enclosed a copy of the breakdown county by county for Fiscal Year 1976 for costs incurred pursuant to Section 95-506(4). Also, the amounts received by the Warm Springs State Hospital during that fiscal year are listed. The discrepancies in some counties is due from prior billings or unpaid balances from Fiscal Year 1975 or Fiscal Year 1977. I hope this information is of some use to the Committee on considering this bill and the fiscal impact it has upon the Department of Institutions.

Further, I would like to clear up any misunderstanding that some of the committee members may have concerning who pays the cost once the patient is returned under Section 95-508 for custody and treatment. Once the defendant is returned pursuant to a court order under the statute, the responsibility for his care and maintenance is either the State's or his. The authority for assessing financial liability is found in Chapter 16 of Title 80 of the Revised Codes of Montana. The counties are at that point no longer responsible for the care and maintenance of the individual.

Very truly yours,

*Nick A. Rotering*  
Nick A. Rotering  
Staff Attorney

NAR/clk

cc Joan Uda  
Senator Hazelbaker



To: Nick KOTERING

From: NANCY L. SCHWEND

RE: AMOUNTS BILLED & RECEIVED ON CRIMINAL %'s @ WSSH

Form 4256 Counties

FYE 1973

State Publishing Co.  
Helena, Montana

	BILLED	REC'D	No. OF PAYMENTS
Beaverhead	43245	62167	4
Big Horn			
Blaine	144254	144254	5
Broadwater	41071		
Carbon	18220	55250	1
Carter			
Cascade	2497014	2227552	10
Chouteau	208589	44237	1
Custer		403589	5
Daniels			
Dawson	116953	238842	6
Deer Lodge	301652	264670	4
Fallon	66953		
Fergus	334325	371569	10
Flathead	947591	398304	6
Gallatin	229317	302197	3
Garfield			
Glacier			
Golden Valley			
Granite	4281	4281	1
Hill	336570	375812	5
Jefferson	194260	219813	6
Judith Basin			
Lake	771495	370985	7
Lewis and Clark	389972	432500	11
Liberty			
Lincoln	433952	202517	6
Madison			
McCone			
Meagher			
Mineral			
Missoula	546943	400859	9
Musselshell	164566	104132	3
Park	178297	106986	2
Petroleum			

Phillips	384612	294377	4
Pondera			
Powder River			
Powell	81900	36800	1
Prairie			
Ravalli	250787	184005	7
Richland			
Roosevelt	240673	47724	1
Rosebud			
Sanders	34392	34392	1
Sheridan			
Silver Bow	995284	734814	9
Stillwater		173825	1
Sweet Grass			
Teton	9516	9516	1
Toole			
Treasure	8225	46882	1
Valley	312797	136240	4
Wheatland	4611	8380	1
Wibaux			
Yellowstone	822165	553775	12
TOTAL	11114482	8991246	148

BOARD OF CRIME CONTROL

1336 HELENA AVENUE

HELENA, MONTANA 59601

TELEPHONE NO. 449-3604

February 2, 1977

LET REPLY REFER TO:

To: 1977 Legislature

Subject: Summary - explanation - alternatives. SB 250 revising representation on the board of crime control; clarifying rulemaking functions, etc., amending SBA-1207

GENERAL PURPOSE OF PROPOSED REVISION:

- (1) to eliminate conflict between state and federal statutes in regard to the composition of the supervisory board.
- (2) to clarify ambiguities as to the authority of the board.

DETAILED LIST OF PROPOSED REVISIONS BY SECTION:

Subsection (2), column 1, lines 20-22. Deletes words "section" and "of this act" to conform to standard bill-drafting form.

Subsection (3), column 1, lines 23-25, and column 2, lines 1 through 11. Deletes a specific number of members of the board, but continues reference to method of appointment as a "quasi-judicial" board under SBA-112 (see deleted subsection (3), and substitutes current federal statutory language describing representational requirements. In effect, the deletion of a numerical requirement for the board would result in an increase from 16 members to 18, 19, or 20. This is because recent amendments to Title 2 of the Montana Crime Control Act require that the board membership, inter alia, include "as judicial members, at a minimum, the chief judicial officer or other officer of the court of last resort, the chief judicial administrative officer or other appropriate judicial administrative officer of the State, and a local trial court officer." (P.L. 94-503, sec. 203(a)(2), 42 USC 5921). One or more additional judicial members may be required by MMA rules authorized by another amended section.

SUGGESTED ALTERNATIVE AMENDMENT

If it seems preferable to limit the board to a particular number of members, we would recommend a committee amendment to subsection (3), column 1, line 23, to substitute "no more than 20" for "sixteen (16)."

---

Lines 3 through 11 of column 2 represent a substitution of current Title I compositional requirements of a supervisory board of a state planning agency for former Title I requirements, and seeks to care for future changes by reference to any specific requirements that may be established by DEAF rule, or by amendment to Title I.

SUGGESTED ALTERNATIVE AMENDMENT

In order to obviate any need for future amendment to 82A-1207 in regard to board composition, it might be desirable to strike all the language of subsection (3) beginning with column 1, line 24, and substitute "appointed by the governor in accordance with 82A-112 and with the representational requirements of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, or as it may be amended."

---

Subsection (4), column 2, lines 15-19. Grants express powers to the board to make rules and to hear contested cases relating to its functions assigned by federal law. Presently, 82A-1207 delegates such express authority only in the area of establishing minimum standards for peace officers standards and training. Current provisions of the Administrative Procedures Act are ambiguous as to implied rulemaking and quasi-judicial authority for agencies such as the board of crime control. In the past, the board has promulgated some procedural rules (now outdated), and the board or its committees have adopted some "policies" related to procedures and to eligibility of prospective subgrantees. This amendment is suggested

In order to present an opportunity to the legislature expressly to grant or to deny rulemaking and quasi-judicial functions to the board. The board would assume that a rejection of the proposed amendment would signify the intention of the legislature to deny substantive rulemaking and quasi-judicial authority in areas other than peace officers' standards and training. On the other hand, if the grant of authority is explicit, the board would revise its current rules and would formulate its policies into rules, with proper notice and opportunity for hearing.

Subsection (4), column 2, lines 20 - 24. Adds language defining "peace officers" for purposes of establishing minimum standards for peace officers' employment and training. The definition is one proposed for purposes of clarification by the Advisory Council on Peace Officers' Standards and Training. It excludes certain personnel of regulatory agencies who are statutorily defined as "peace officers" for purposes of enforcement of regulatory or administrative laws or rules.

SUGGESTED COMMITTEE AMENDMENT TO SUBSECTION (4), COLUMN 3, TO FOLLOW LINE 6.

After the proposed revisions were drafted, a potential statutory conflict was discovered between 82A-1207 and 1693705. The latter section also deals with the authority of the board to establish minimum qualifications for employment of peace officers (in this case, deputy sheriffs, marshalls, and policemen). At the same time, it establishes minimum employment qualifications for deputy sheriffs in subsection (2). For purposes of clarification, we suggest the following addition to follow line 6:

Minimum standards established by the board for the employment and training of peace officers are in addition to any minimum standards prescribed by law.

---

Section (5) in the current statute was a transitional provision at the time of executive reorganization and is no longer needed.

Section (6) is struck because the substance of the provision is incorporated in subsection (2) as it is proposed to be amended.

#### FINANCIAL EFFECT

Should the legislature see fit to permit an increase in board membership, it is estimated that costs associated with each member added could approximate \$1,000 for travel, per diem, and additional operating expenses for each year of the biennium. If new members reside in Helena (as would be the case with the chief of justice and the court administrator), obviously the costs would be much less.

No significant additional costs of operation are anticipated if clear recommending and quasi-judicial authority are granted.

Fifty per cent of any additional costs in either area would be borne by federal funds.

**PART A -- LAW ENFORCEMENT ASSISTANCE ADMINISTRATION**

Sec. 101. (a) There is hereby established within the Department of Justice, under the general authority, policy direction, and general control of the Attorney General, a Law Enforcement Assistance Administration (hereinafter referred to in this title as 'Administration') composed of an Administrator of Law Enforcement Assistance and two Deputy Administrators of Law Enforcement Assistance, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The Administrator shall be the head of the agency. One Deputy Administrator shall be designated the Deputy Administrator for Policy Development. The second Deputy Administrator shall be designated the Deputy Administrator for Administration.

(c) There is established in the Administration the Office of Community Anti-Crime Programs (hereinafter in this subsection referred to as the 'Office'). The Office shall be under the direction of the Deputy Administrator for Policy Development. The Office shall—

(1) provide appropriate technical assistance to community and citizens groups to enable such groups to apply for grants to encourage community and citizen participation in crime prevention and other law enforcement and criminal justice activities;

(2) coordinate its activities with other Federal agencies and programs (including the Community Relations Division of the Department of Justice) designed to encourage and assist citizen participation in law enforcement and criminal justice activities; and

(3) provide information on successful programs of citizen and community participation to citizen and community groups.

42 USC 3711

SUPERVISION BY  
ATTORNEY  
GENERAL

Office of  
Community Anti-  
Crime Programs.  
Establishment.

**PART B--PLANNING GRANTS**

Sec. 201. It is the purpose of this part to provide financial and technical aid and assistance to encourage States and units of general local government to develop and adopt comprehensive law enforcement and criminal justice plans based on their evaluation of State and local problems of law enforcement and criminal justice.

Sec. 202. The Administration shall make grants to the States for the establishment and operation of State law enforcement and criminal justice planning agencies (hereinafter referred to in this title as 'State planning agencies') for the preparation, development, and revision of the State plan required under section 30 of this title. Any State may make application to the Administration for such grants within six months of the date of enactment of this Act.

Sec. 203. (a) A grant made under this part to a State shall be utilized by the State to establish and maintain a State planning agency. Such agency shall be created or designated by the chief executive of the State or its State law and shall be subject to the jurisdiction of the chief executive. Where such agency is not created or designated by State law, it shall be so created or designated by no later than December 31, 1978. The State planning agency and any regional planning unit within the State shall, within their respective jurisdictions, be representative of the law enforcement and criminal justice agencies, including agencies directly related to the prevention and control of juvenile delinquency, units of general local government, and public agencies maintaining programs to reduce and control crime, and shall include representatives of citizens, professional, and community organizations, including organizations directly related to delinquency prevention.

42 USC 3721

State planning  
agencies.

42 USC 3723

The State planning agency shall include as judicial members, at a minimum, the chief judicial officer or other officer of the court of last resort, the chief judicial administrative officer or other appropriate judicial administrative officer of the State, and a local trial court judicial officer. The local trial court judicial officer and, if the chief judicial officer or chief judicial administrative officer cannot or does not choose to serve, the other judicial members, shall be selected by the chief executive of the State from a list of no less than three nominees for each position submitted by the chief judicial officer of the court of last resort within thirty days after the occurrence of any vacancy in the judicial membership. Additional judicial members of the State planning agency as may be required by the Administration pursuant to section 515(a) of this title shall be appointed by the chief executive of the State from the membership of the judicial planning committee. Any executive committee of a State planning agency shall include in its membership the same proportion of judicial members as the total number of such members bears to the total membership of the State planning agency. The regional planning units within the State shall be comprised of a majority of local elected officials. State planning agencies which choose to establish regional planning units may utilize the boundaries and organization of existing general purpose regional planning bodies within the State.

(b) The State planning agency shall--

(1) develop, in accordance with part C, a comprehensive statewide plan for the improvement of law enforcement and criminal justice throughout the State;

"(2) define, develop, and correlate programs and projects for the State and the units of general local government in the State or combinations of States or units for improvement in law enforcement and criminal justice;

"(3) establish priorities for the improvement in law enforcement and criminal justice throughout the State; and

(4) assure the participation of citizens and community organizations at all levels of the planning process.

(c) The court of last resort of each State or a judicial agency authorized on the date of enactment of this subsection by State law to perform such function, provided it has a statutory membership of a majority of court officials (including judges, court administrators, prosecutors, and public defenders) may establish or designate a judicial planning committee for the preparation, development, and revision of an annual State judicial plan. The members of the judicial planning committee shall be appointed by the court of last resort or a judicial agency authorized on the date of enactment of this subsection by State law to perform such function, provided it has a statutory membership of a majority of court officials (including judges, court administrators, prosecutors, and public defenders) and serve at its pleasure. The committee shall be reasonably representative of the various local and State courts of the State, including appellate courts, and shall include a majority of court officials (including judges, court administrators, prosecutors, and public defenders).

(d) The judicial planning committee shall--

(1) establish priorities for the improvement of the courts of the State;

(2) define, develop, and coordinate programs and projects for the improvement of the courts of the State; and

(3) develop, in accordance with part C, an annual State judicial plan for the improvement of the courts of the State to be included in the State comprehensive plan.

Functions.

Judicial planning committee.



tions under this title. Each such department or agency is authorized to cooperate with the Administration and, to the extent permitted by law, to furnish such materials to the Administration. Any Federal department or agency engaged in administering programs related to this title shall, to the maximum extent practicable consult with and seek advice from the Administration to insure fully coordinated efforts, and the Administration shall undertake to coordinate such efforts.

Sec. 514. The Administration may arrange with and reimburse the heads of other Federal departments and agencies for the performance of any of its functions under this title.

Sec. 515. (a) Subject to the general authority of the Attorney General and under the direction of the Administrator, the Administration shall—

42 USC 3763

(1) review, analyze, and evaluate the comprehensive State plan submitted by the State planning agency in order to determine whether the use of financial resources and estimates of future requirements as requested in the plan are consistent with the purposes of this title to improve and strengthen law enforcement and criminal justice and to reduce and prevent crime; if warranted, the Administration shall thereafter make recommendations to the State planning agency concerning improvements to be made in that comprehensive plan;

(2) assure that the membership of the State planning agency is fairly representative of all components of the criminal justice system and review, prior to approval, the preparation, justification, and execution of the comprehensive plan to determine whether the State planning agency is coordinating and controlling the disbursement of the Federal funds provided under this title in a fair and proper manner to all components of the State and local criminal justice system; to assure such fair and proper disbursement, the State planning agency shall submit to the Administration, together with its comprehensive plan, a financial analysis indicating the percentage of Federal funds to be allocated under the plan to each component of the State and local criminal justice system;

(3) develop appropriate procedures for determining the impact and value of programs funded pursuant to this title and whether such funds should continue to be allocated for such programs; and

(4) assure that the programs, functions, and management of the State planning agency are being carried out efficiently and economically.

(b) The Administration is also authorized—

(1) to collect, evaluate, publish, and disseminate statistics and other information on the condition and progress of law enforcement within and without the United States; and

(2) to cooperate with and render technical assistance to States, units of general local government, combinations of such States or units, or other public or private agencies, organizations, institutions, or international agencies in matters relating to law enforcement and criminal justice.

(c) Funds appropriated for the purposes of this section may be expended by grant or contract, as the Administration may determine to be appropriate.

year at least, and in the county where such appointment is made for the period of at least six (6) months prior to the date of said appointment; provided, that the provisions of this section shall not apply in cases of such officers summoning a posse forthwith to quell public disturbance or domestic violence.

(2) No sheriff of a first, second and third class county shall employ as a deputy any individual who does not possess all the following qualifications:

- (a) graduate of an accredited high school or the equivalent thereof;
- (b) good moral character;
- (c) never been convicted of a felony;
- (d) has not within five (5) years immediately preceding his date of employment been affiliated in any manner with a subversive organization;
- (e) been examined by a physician licensed to practice in the state of Montana within thirty (30) days immediately preceding his date of employment and has been pronounced in good physical condition.

Subsection (2) of this section shall not be applicable to any deputy sheriff of a first, second or third class county whose term of employment commenced prior to the effective date of this act.

(3) Any person whose term of employment as a deputy sheriff of a first, second or third class county commences subsequent to the effective date of this act shall serve a one-year probationary period and that during this one-year period the employment of any such deputy may be terminated by the sheriff with or without cause and without recourse to the sheriff under the terms of this act.

(4) It shall be the duty of the sheriff of a first, second or third class county to cause all deputies whose term of employment commenced subsequent to the effective date of this act to attend that academy provided for by chapter 52, Title 75, R. C. M. 1947, except that the sheriff may accept reasonable delays in attendance at the academy as shown by the deputy's declared intention of attending. Failure to satisfactorily complete the course offered by said academy shall be deemed cause to terminate a deputy's employment.

(5) Any deputy sheriff of a first, second or third class county now employed or that may hereafter be employed shall continue in service until relieved of his employment in the manner hereinafter provided and only for one or more of the following specified causes:

- (a) conviction of a felony subsequent to the commencement of such employment;
- (b) willful disobedience of an order or orders given by the sheriff;
- (c) drinking intoxicating liquor while in uniform or while on official duty or being intoxicated in a public place while in uniform or while on official duty;
- (d) sleeping while on duty;
- (e) incapacity materially affecting ability to perform official duties;
- (f) gross inefficiency in the performance of official duties;
- (g) participation in any political campaign as a candidate or the solicitation of political support for any candidate for public office.

NAME: Nancy Lien DATE: 2/2/77

ADDRESS: 1218 E. 6<sup>th</sup> Ave

PHONE: 449-3878

REPRESENTING WHOM? Mental Health Advisory Council

APPEARING ON WHICH PROPOSAL: SB 153

DO YOU: SUPPORT?                      AMEND?                      OPPOSE? X

COMMENTS: support evaluation costs being  
borne by the county to encourage  
evaluations at community mental  
health facilities. Testimony consisted  
of the text of Recommendation #47  
in the report of the Mental Health  
Advisory Council.

Ordinary

S.B. 153 + 250  
~~77~~

Note Book No

Note Book No

[illegible]

# STANDING COMMITTEE REPORT

February 2, 1977

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 250

Respectfully report as follows: That SENATE Bill No. 250,  
the introduced bill, be amended as follows:

1. Amend Title, lines 6 and 7.

Following: "CLARIFYING THE"

Strike: "RULEMAKING AND QUASI-JUDICIAL"

2. Amend page 2, section 1, subsection (4), lines 15 through 18, and 19.

Following: "act."

Strike: "It may make any necessary rules and hear and decide contested cases in performing its functions assigned by law and in keeping with the requirements of the Montana Administrative Procedure Act."

3. Amend page 2, section 1, subsection (4), line 23.

Following: "or"

Insert: "fish and"

AND AS SO AMENDED, DO PASS.

~~DO PASS~~