

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce D. Crippen, on January 5, 1989, at 10:00.

ROLL CALL

Members Present: Senators Bruce Crippen, Al Bishop, Tom Beck, Mike Halligan, Bob Brown, Joe Mazurek, Loren Jenkins, R. J. "Dick" Pineseault, John Harp and Bill Yellowtail.

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Staff Attorney and Rosemary Jacoby, Committee Secretary.

Announcements/Discussion: None.

HEARING ON SENATE BILL 22

Presentation and Opening Statement by Sponsor: Senator Dorothy Eck of Bozeman, representing District 40, opened the hearing stating it was her understanding that the Judiciary Committee was familiar with the efforts of the Department of Revenue and the federal government to make child support laws more effective. Basically, Senate Bill 22 did two things, she stated. They were to establish a central case clearing house, which would carry on a function the department has done for some time. The second is to provide for cooperative agreements to collect child support.

She thought it would be important to look at cooperative agreements with county attorneys, who receive money for carrying out these duties. If some of the counties do not sign agreements, then she understood that the department would be responsible for providing the functions necessary. She thought the cooperative agreement would be preferable.

Originally, it was felt the bill would be revenue neutral, she commented, but if agreements were not signed, some cost

might be incurred. Seven counties now receive payment from the Revenue Department. Those payments amounted to \$53,930, and incentive payments amounted to around \$21,000. On the other hand, the counties have incurred costs of around \$11,000 so she felt the counties were coming out OK financially, she said. She urged serious consideration of the bill by the committee.

List of Testifying Proponents and What Group they Represent:

John McRae, Missoula, Department of Revenue
Brenda Nordlund, Montana Women's Lobby

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

John McRae gave some history of the child support laws. Amendments had taken place in the 1984 and 1988 to Title 4-D requiring some very specific laws enacted by the states. During the last session, he said, some had passed through this committee. In addition, the 1984 amendments delegated regulatory authority and implementation (of the amendments) to the federal office of Child Support Enforcement.

One very specific regulation came out in February, 1988, with very definitive standards for how interstate cases are to be processed, even down to the forms that are to be used, Mr McRae stated. In the past many fathers could escape child support obligations merely by crossing the state line. Since then, URESA (Uniform Reciprocal Enforcement Support Act) has been established which allows interstate activities, but there has been problems as to the implementation within various states. The regulations proposed in SB 22 are to eliminate the inadequacies, he said.

The clearinghouse has been informally implemented. When requests came into the individual counties where the resident parent resided, it was not known how many cases there were, who was working on the cases, or if they were being worked on effectively. Interstate regulations require that interstate cases be prepared the same as in-state cases. The bill should achieve the requirements, plus uniformity, he stated. The essence of the clearinghouse is to gather information, share the information, and to determine the type of activity to take place for each case, whether it be extraditing, income withholding or whatever is

the best course of activity. This bill legalizes what is taking place at this time, he said. In addition, subsection 3 allows the department to expand the scope of cooperative agreements with county attorneys. The counties would receive federal incentive monies back. For the most part, counties have benefitted. However, the same requirements apply to the counties, and in the most recent audit, most county attorneys failed, so the department felt a need to reassess what is being done at present. This bill would provide the county attorneys the same advantages as the department if the counties choose to enter into the cooperative agreements. This, he stated, would be of great benefit to the state of Montana.

Brenda Nordland said that SB 22 is not particularly interesting in some ways, it should improve the means to obtain child support. She felt it would help improve the standard of living for the spouse and children and should defray public welfare. (See Exhibit 1)

Questions From Committee Members: Senator Pinsoneault asked Mr. McRae how the bill would work. Mr. McRae stated that, if a child and mother live in California and the father lives in Montana, there is an interstate process which may take place in Montana either under URESA or under interstate withholding. This particular bill is primarily directed at URESA. It will allow each case to be registered as soon as it arrives in the clearinghouse with specific time requirements, he said, to obtain information on addresses, employment etc. URESAs are all being redirected to the clearing house and it will insure that all county attorneys are operating in compliance with federal regulations. Our clearing house will disseminate information to the other state. County attorneys do not have time to do all that is required.

Senator Pinsoneault asked if there was a standard contract with county attorneys and Mr. McRae said there would be a new one improving on the present one.

Senator Pinsoneault asked if any problems with the counties were anticipated, and Mr. McRae said some counties may feel this would be just too much to do and would refuse to sign the contract. In that case, the entire workload would fall on the department. At the present time, only seven counties are participating in cooperative agreements. Other counties have a lower workload and don't feel it fiscally feasible for them.

Senator Halligan asked if there was any distinction between an AFDC case and a non-AFDC case and Mr. McRae said no.

Senator Halligan asked about extradition. Mr. McRae said the department preferred the voluntary process, but this bill will provide for the individuals who refuse. There will be a hearing process with a trained hearings officer.

Senator Jenkins asked if there would be a large fiscal note and Mr. McRae said that a fiscal note was being prepared because, if the county attorneys didn't agree to sign a contract, the department would have to take over that county's cases resulting in fiscal impact. But, he said, if the present situation continues, there would be none.

Senator Jenkins asked Mr. McRae about the cost of training the county attorneys and expanding what is presently being done. Mr. McRae said the training would be minimal and would be on-the-job training and there would not be expansion, as the process is presently in place.

Senator Jenkins asked how hearings could take place when one party is in-state and one is out of the state. Mr. McRae said it is handled with dispositions quite commonly.

Closing by Sponsor: Senator Eck thanked the committee for its support in the past and asked for their support of this bill. She stated that 1/3 of single-parent families are living in a poverty level. She felt the irresponsible parent should pay support. She also stated the necessity of Montana to respond to the federal mandate and also felt this would result in more efficiency in dealing with child support cases. She added that various groups are supporting the bill, including one that educates young men to the fact they are responsible for 18 years of child support for any children they father. She closed the hearing.

DISPOSITION OF SENATE BILL 22

No disposition was made at this time, as the committee desired to await the forthcoming fiscal note.

Discussion on Senate Bill 22

Senator Mazurek asked if the county attorneys wanted this bill. Many counties would not want this burden, he

said, and the department would have to undertake the work. Senator Beck asked if the counties would receive a fiscal note. Senator Halligan asked if the county attorneys do not want to cooperate, would there be a reimbursement to the county for cases being handled by the department.

Mr. McRae stated there were reimbursements being considered. It was under discussion and had not been resolved at the time, he said. The department is in the process of putting together a proposed agreement and giving the county attorneys the opportunity for input.

Senator Crippen asked if this bill needed a statement of intent. Valencia answered, no, it would only be required when granting new rule-making authority.

HEARING ON SENATE BILL 23

Presentation and Opening Statement by Sponsor: Senator Greg Jergeson of Chinook, representing District 8, opened the hearing stating the purpose of the bill was to allow videotaped testimony in sex crimes. In some of these cases, other crimes are being committed or being attempted at the same time. Many times the victim of the rape was intimidated and didn't wish to appear in person. This bill was in response to that situation, he stated. He distributed a bill summary and proposed amendments (Exhibit 2).

List of Testifying Proponents and What Group they Represent:

John Connor, Attorney General's office

List of Testifying Opponents and What Group They Represent:

There were none.

Testimony: John Connor of the Attorney General's office said he was appearing for the county attorneys. He said this would eliminate the problem of videotaped testimony not being allowed where the criminal activity involved more than one crime. Often, a robbery aggravated burglary, or kidnapping charges would be made in connection with rape charges because they occurred in the same incident. The victim of rape does not want to confront the rapist and this bill would free the victim from the trauma of coming into court, he stated. It is a practical process eliminating the need for taking testimony twice, according to Connor. This

bill would allow the victim to testify by video tape rather than appear in person. Appearing in court makes a victim not want to appear in court to face the person who has committed the crime, he said. The victim would not be subject to the trauma of coming into court. It would allow for a process that has a practical benefit -- not having to take testimony twice. All the rules of procedure would apply, he stated. The right to cross examine would remain in place, but would reduce public trauma.

Questions From Committee Members: Senator Crippen asked, suppose the sex crime aspect was dropped, then wouldn't there be a situation where video taping testimony is allowed for the other crimes. John Connor answered yes, but the victim still would have a right to give testimony without the trauma of coming into court. John Connor stated that there must be probable cause present for making the charge. He didn't see it as a problem because his main concern in this legislation was trying to protect the victim. Chairman Crippen stated said, if he had a burglar, he would be traumatized. Would video tape be available to him, he asked. Mr. Connor said not under present law. Senator Crippen then asked if other tools of examination were allowable. Cross examination would be allowed, but the victim would not have to come into court, said Mr. Connor.

Senator Crippen asked if it wouldn't be an advantage to the victim to testify in person. In some cases, the victim might want to appear in court, he said.

Senator Crippen asked if the defense had the option of using videotape. Mr. Connor answered no.

Senator Jenkins asked if there hadn't been a supreme court case about this. Mr. Connor answered, in Corey vs. Iowa, the victim was allowed to use a screen in front of her. The supreme court said the right to confidentiality was denied.

Senator Mazurek asked if there hadn't been a recent decision. Mr. Connor said he thought that case was the State vs. Ingall, which referred to a four-year-old victim in which the court decided to accept hearsay.

Closing by Sponsor: Senator Greg Jergeson closed the hearing on Senate Bill 23.

DISPOSITION OF SENATE BILL 23

Discussion: Valencia Lane and to John Connor discussed the language regarding definition.

Amendments and Votes: Senator Mazurek MOVED that the AMENDMENTS be accepted. Amendments PASSED UNANIMOUSLY.

Recommendation and Vote: Senator Pinsoneault MOVED that the committee give a DO PASS AS AMENDED recommendation to Senate Bill 23. The vote was UNANIMOUS.

HEARING ON SENATE BILL 21

Presentation and Opening Statement by Sponsor: Senator Harp opened the hearing on SB 21 stating the purpose of this bill is to get tough with welfare fraud. County attorneys are having a tough time serving papers. It would allow warrants to be served. This also allows the DOR to try to serve papers on food stamp fraud, he said. This was not anything new, he commented, but was simply expanding on present law to reduce expense and welfare fraud. Our laws need to be tougher on people cheating on welfare, Senator Harp stated. He felt the job was not being accomplished at this time. Counties supporting this bill are Custer, Beaverhead, Missoula, and Garfield, he reported. And, there would be no additional costs, he stated.

List of Testifying Proponents and What Group they Represent:

Rick Day , Department of Revenue
Chuck O'Reilly, Sheriff, Lewis & Clark County,
representing the Montana Peace Officers

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Rick Day gave the testimony from the Department of Revenue. See attached statement. (Exhibit 3)

Sheriff Chuck O'Reilly stated that currently the investigative officers couldn't keep up the service of warrants. There was an ever-increasing demand on the time of his officers to provide this service, he said. He urged support of Senate Bill 21. (Exhibit 4)

Questions From Committee Members: Senator Halligan stated that confidentiality was a concern to him. He referred to page 2, line 2 and wondered if confidentiality would be violated by that part of the bill. Mr. Day answered that the department had already been designated to investigate and to act responsibly with the information. The department's standards are very restrictive, he said. Information in the area of public assistance would not be released, he assured the committee.

Senator Jenkins asked about vendor payments. Mr. Day responded they were payments to doctors and medicaid.

Senator Mazurek stated when the DOR bills were presented to the Revenue Oversight Committee there were fiscal notes. He thought there should be one for this bill. Mr. Day stated that it was thought there would not be a fiscal impact.

Senator Yellowtail asked, if it was anticipated that this would lead to the department doing all the serving. Mr. Day stated they were currently doing all the work in the area of fraud serving of papers. The department cooperates directly with the sheriff's office, he said, per their wishes.

Closing by Sponsor: Senator Harp closed the hearing on SB 21.

DISPOSITION OF SENATE BILL 31

Discussion of the bill:

Senator Crippen asked about SB 31 regarding some amendments being aggregated. In discussion, it was stated that youths would be dealt with under the youth act.

Halligan asked if juveniles could be charged as adults. Mr. Connor stated, no. Senator Pinsonault asked at what age a youth could be "bumped into" criminal mischief charges. The youth would have to be at least 16 and have done a number of serious crimes. Criminal mischief is not one of those, said Mr. Connor.

Recommendation and Vote:

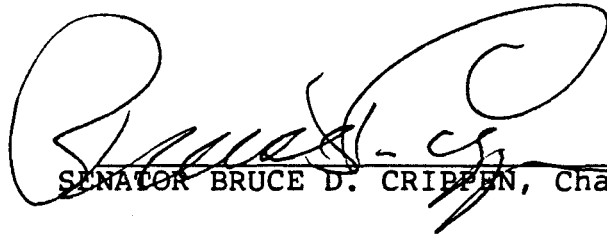
Senator Halligan moved that Senate Bill 31 DO PASS. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL 21

Recommendation and Vote: Senator Harp MOVED that Senate
Bill 21 DO PASS. The MOTION PASSED UNANIMOUSLY.

ADJOURNMENT

Adjournment At: 11:30 a.m.



SENATOR BRUCE D. CRIBBEN, Chairman

BDC/rj

minutes.105

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 1-5-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	X		
SENATOR BECK	X		
SENATOR BISHOP	X		
SENATOR BROWN	X		
SENATOR HALLIGAN	X		
SENATOR HARP	X		
SENATOR JENKINS	X		
SENATOR MAZUREK	X		
SENATOR PINSONEAULT	X		
SENATOR YELLOWTAIL	X		

Each day attach to minutes.

STANDING COMMITTEE REPORT

January 5, 1989

Mr. President: We, the committee on Judiciary report that SB 23 (first reading copy -- white) do pass and be amended as follows:

1. Title, lines 6 and 7.

Strike: "ACTION BEING PROSECUTED"

Insert: "SAME TRANSACTION"

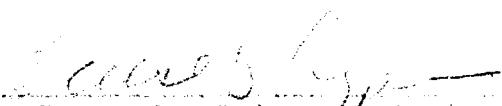
2. Page 1, lines 13 and 14.

Following: "45-5-507"

Strike: ", and for all offenses arising from the action being prosecuted,"

Insert: "and for the prosecution of any offense arising from the same transaction, as defined in 46-11-501,"

DO PASS AS AMENDED

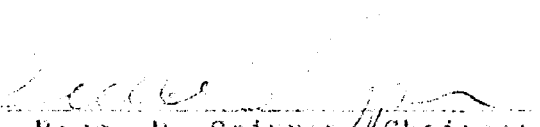
Signed: 
Bruce D. Crippen, Chairman

STANDING COMMITTEE REPORT

January 5, 1989

Mr. President: We, the committee on Judiciary report that SB 31
(first reading copy -- white) do pass.

DO PASS


Signed: 
Bruce D. Crippen, Chairman

STANDING COMMITTEE REPORT

January 5, 1989

Mr. President: We, the committee on Judiciary report that SB 21
(first reading copy -- white) do pass.

DO PASS

Signed 
Bruce D. Crippen, Chairman

Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Robert B. CURRY, MD.	Univ. of Montana ^{Health Service} students	12	✓	
John Connor	Attorney General's Office	31	✓	
VALLY JEWELL	MT. MAGISTRATES ASSOC	31	✓	
MIKE LAVINI	A.G.'s office	31	✓	
Tracy Loendick	m u g	12	✓	
Cordyn Huchus	Intern			
Prof. J. Shawwood	Self	31	✓	
Luuk O'Reilly	Mt Sheriff's Peace Officers	21	✓	
Vick Day	Dept of Revenue	21	✓	
JOHN McRAE	DOR / CSFB	22	✓	

(Please leave prepared statement with Secretary)

NAME: BRENDA NORDLUND

DATE:

ADDRESS: MONTANA WOMEN'S LOBBY (MWL)
PO Box 1099, Helena, MT 59601

PHONE: 449-7917

REPRESENTING WHOM? MONTANA WOMEN'S LOBBY

APPEARING ON WHICH PROPOSAL: SB22

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: 1) child support top priority of MWL
2) increase efficiency & effectiveness
of child support enforcement
A) raise standard of living for women
& children who might otherwise be impoverished
B) defray public costs of nonsupport
C) change public perceptions
re: payment of child support
and fairness of child
support enforcement

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT NO. 2DATE 1-5-89BILL NO. SB 23

BILL SUMMARY
SB 23 (Jergeson)

This bill would amend existing law (46-15-401) to allow a sex crime victim's videotaped testimony to be used in a criminal trial as to all charges that are brought against a defendant.

Current law: Under current law, a victim of certain sexual crimes (sexual assault of a juvenile by another juvenile where bodily injury is involved; sexual intercourse without consent; deviate sexual conduct; or incest) may be allowed to testify in the criminal trial by means of videotaped testimony. As the statute is currently drafted, a defendant's attorney can argue that the videotaped testimony of the victim can only be used regarding the charges arising out of the sex crime itself but not as to other crimes that may be charged that arise from the same transaction. For example, if a man forcibly breaks into a woman's home and rapes her, he may be charged with aggravated burglary as well as sexual intercourse without consent.

This bill: This bill would make it clear that the victim would not have to testify in person at the trial on the aggravated burglary charges while her videotaped testimony is used at the same trial on the rape charge.

Proposed amendment: Technically, the bill should be amended to read better. A proposed amendment is attached.

Amendments to Senate Bill No. 23
Introduced Reading Copy

For the Committee on Judiciary

Prepared by Valencia Lane
January 4, 1989

1. Title, lines 6 and 7.

Strike: "ACTION BEING PROSECUTED"

Insert: "SAME TRANSACTION"

2. Page 1, lines 13 and 14.

Following: "45-5-507"

Strike: ", and for all offenses arising from the action being prosecuted,"

Insert: "and for the prosecution of any offense arising from the same transaction, as defined in 46-11-501,"

EXHIBIT NO. Lipak
DATE 1/5/89
BILL NO. SB21

EXHIBIT NO. 3 p. 1
DATE 1-5-89
BILL NO. 5-89 SB21

NAME: Rick Day

ADDRESS: Old Livestock Building Department of Revenue

PHONE: 444-2546

REPRESENTING WHOM? Dept. of Revenue

APPEARING ON WHICH PROPOSAL: SB21

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: Written testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY

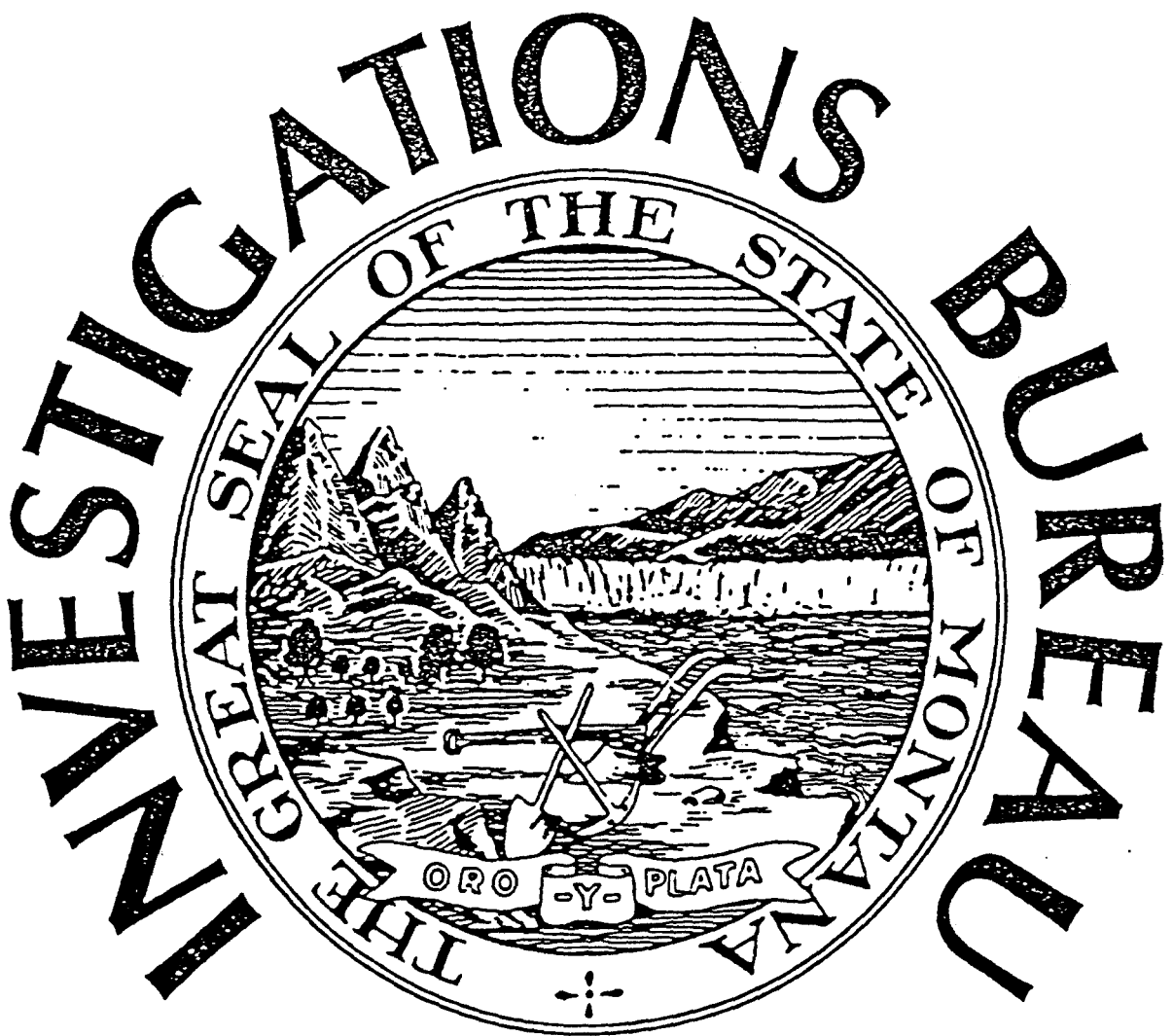
EXHIBIT NO. 2, p. 2

DATE 1-5-89

BILL NO. SB 21

Rick Day

DEPARTMENT OF REVENUE



SB21
Senate Judiciary Committee
Summary of testimony
Rick Day, Bureau Chief
Investigations Bureau
Investigations & Enforcement Division
Department of Revenue
January 5, 1988

The department's investigative authority is based on a variety of statutory sections and designations. SB 21 merely extends that authority in a very limited fashion. Peace officer designation for DOR investigators (which is already found in the gaming and tobacco tax areas) would be granted in public assistance (AFDC, Food stamps and medicaid) criminal fraud investigations. The following summarizes key points which support this legislation:

- 1) The proposal requires no additional staff but is intended to make existing staff more effective by allowing bureau investigators to serve notices to appear and arrest warrants generated from county attorneys.
- 2) Eliminate delay caused by extensive service demands on local law enforcement.
- 3) Let defendants and the public see more immediate sanctions as a result of fraud.
- 4) Allow for quicker initiation of recovery. The ability to serve arrest warrants would result in at least a 40% or \$50,000 increase in court ordered restitution. While the number and total public assistance dollars involved in cases has increased the amount of court ordered restitution has dropped in FY88. 140 welfare fraud cases involving a potential of \$387,947 are awaiting prosecution. The courts cannot order restitution or impose penalty until the arrest warrants or notices to appear are served.
- 5) The legislation received unanimous vote of support by the Montana Sheriff's and Peace Officer's Association Board of Directors. Mike Schafer, Yellowstone County Sheriff, Bob Butorovich, Butte/Silver Bow County Sheriff and Chuck Rhodes, Flathead County Sheriff were among the board members voting to support the legislation.
- 6) Written letters of support have been received from the Missoula, Beaverhead, Granite and Custer County Attorneys.

EXHIBIT NO. 3
DATE 1-5-89
BILL NO. 5821

7) Investigations Bureau investigators are now sworn peace officers, M.L.E.A. trained and P.O.S.T. certified. By authority of the Montana Codes Annotated, investigators for the Montana Department of Revenue, Investigations Bureau, are designated peace officers and as such are authorized by state law to carry concealed weapons. Sections 16-11-141, 23-5-605, and 44-11-101, MCA. Investigations Bureau policy authorizes the carrying of weapons in situations requiring the protection of the investigator or others and not during the normal course of daily activities.

Handout Summary (attached)

- a) Summary of testimony
- b) Example data of pending arrest warrants
- c) Letters in support
 - Beaverhead County Attorney
 - Custer County Attorney
 - Granite County Attorney
 - Missoula County Attorney
- d) Major case review 1988
- e) Montana Standard news article
- f) General statistics - Investigations Bureau
- g) Welfare fraud activity summary FY86-88
- h) Dollar loss referred for prosecution graph
- i) Potential recovery vs. expense graph
- j) Investigations Bureau firearms policy
- k) Documents to clarify investigators' status
 - page 1 position description
 - oath of office
 - firearms qualification

PROBLEM OR OPPORTUNITY: The Investigations Bureau is responsible for investigation and referral of welfare and medicaid fraud cases to the county attorneys for prosecution. In many cases a criminal charge is filed. However, due to extreme local law enforcement caseloads, delay or non-service of arrest warrants or notices to appear keeps a large number of cases from getting to court. The Investigations Bureau needs the ability to serve warrants or notices to appear. This authority would result in more prosecutions and a higher level of restitution.

JUSTIFICATION: In 1973 the legislature empowered the Department of Revenue to investigate public assistance fraud based on referrals from the Department of Social and Rehabilitation Services (SRS). The Department of Revenue's Investigations Bureau is the unit responsible for public assistance fraud investigations. In addition to recipient fraud investigations, the Investigations Bureau assumed the responsibility for vendor fraud investigations following the elimination of the Medicaid Fraud Bureau in 1986.

The Investigations Bureau's role has been purely investigative relative to public assistance fraud. SRS has assumed responsibility for the civil collection of fraud debts and overpayment. The state's 56 county attorneys handle prosecution and the various police and sheriffs' departments arrest and serve notices to appear. Beginning in 1985 SRS and DOR began focusing investigative efforts on the cases involving the highest dollar loss.

In some counties where the demand for service is great the problem is particularly apparent. The following is an example of pending arrest warrants, which preclude court action until served in a Montana county:

DATE DELIVERED TO COUNTY ATTORNEY	AMOUNT
APRIL 7, 1987	\$2,221.22
MAY 22, 1986	\$12,391.72
MAY 8, 1981	\$12,329.82
JANUARY 8, 1987	\$4,449.29
MARCH 26, 1986	\$423.00
APRIL 19, 1978	\$783.00
JANUARY 8, 1987	\$2,704.89
AUGUST 16, 1984	\$1,738.00
MAY 22, 1986	\$449.00
MARCH 26, 1986	\$0.00
MAY 22, 1986	\$2,323.91
JANUARY 8, 1987	\$3,672.00
JANUARY 8, 1987	\$0.00
DECEMBER 4, 1985	\$438.00
FEBRUARY 1, 1985	\$3,138.68
	\$47,112.53

Peace officer status would 1) allow bureau investigators to serve notices to appear and arrest warrants generated from county attorneys relative to public assistance fraud cases, 2) eliminate delay caused by extensive service demands on local law enforcement, 3) let the defendants and the public see more immediate sanctions as a result of fraud and 4) allow for quicker initiation of recovery. The ability to serve arrest warrants would result in at least a 40% or \$50,000 increase in court ordered restitution.

IMPACT ON OTHERS: Local agencies should benefit by reduction in demand for service of warrants and notices to appear and the change is limited to public assistance matters. Serving of warrants is a commonplace occurrence for other state agencies (Highway Patrol and Fish, Wildlife and Parks). Therefore, assumption of this obligation by state investigators would not be unusual. The taxpayers would be better served and those charged with public assistance fraud would face quicker court action. The public assistance recipient would be protected as the arrest or service would be undertaken pursuant to lawful warrant or notice. SRS would not suffer adverse image effects as the Investigations Bureau would be requesting the legislation and taking the field enforcement action. Finally, the budget would not be adversely affected as the request would not involve additional manpower, but would make the fraud prosecution effort more effective.

AUTHORSHIP: Rick Day, Investigations Bureau Chief,
Investigations and Enforcement Division, Department of Revenue,
Old Livestock Building, Helena, Montana - Tel. 444-2846.

BILL NO
DATE 1-5-89
SB 21



OFFICE OF THE COUNTY ATTORNEY
BEAVERHEAD COUNTY, MONTANA

2 SOUTH PACIFIC, CL #2
DILLON, MONTANA 59725
(406) 683-4308

December 6, 1988

SENATE JUDICIARY

EXHIBIT NO. 3, p. 7
DATE 1-5-89
BILL NO. SB 21

THOMAS R. SCOTT
COUNTY ATTORNEY
W. CECIL JONES
DEPUTY
CALVIN ERB
DEPUTY

Rick Day
Department of Revenue
Investigation Division
Old Livestock Building
Helena, Montana 59620

RE: PEACE OFFICER STATUS FOR WELFARE FRAUD INVESTIGATORS

Dear Mr. Day:

Proposed legislation has come to my attention which would amend Section 53-2-501, M.C.A. (1987), to designate the Department of Revenue a criminal justice agency with designated employees and representatives granted peace officer status for the powers of search, seizure and arrest for the enforcement and investigation of Montana laws relating to public assistance and vendor payments.

This office wholly supports the above proposed legislation. I believe the above legislation to be in the best interests of the local law enforcement agencies and would promote enforcement of the laws relating to welfare fraud. Any time we can improve the effectiveness and efficiency of criminal prosecutions, we should attempt to do so. The above proposed legislation is a good step in that direction.

If I can be of any assistance with respect to this legislation, please let me know.

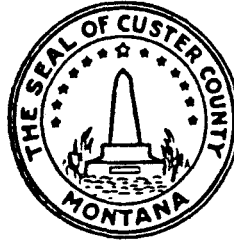
Sincerely yours,

Thomas R. Scott
Thomas R. Scott
Beaverhead County Attorney

TRS/clgh

bc: TOM OBERWEISER, INVESTIGATOR ✓
MONTANA DEPARTMENT OF REVENUE

CUSTER COUNTY ATTORNEY: KEITH D. HAKER
DEPUTY COUNTY ATTORNEY: J. DENNIS CORBIN



SENATE JUDICIARY
EXHIBIT NO. 3, p. 8
DATE 1-5-89
BILL NO. SB 21

Custer County Attorney

Custer County Courthouse
1010 Main
MILES CITY, MONTANA 59301
(406) 232-7800 Ext. 20

December 2, 1988

RECEIVED

DEC 05 1988

Mr. Rick Day, Bureau Chief
Investigations Bureau
Department of Revenue
Old Livestock Building
Helena, Montana 59620-2710

DEPARTMENT OF REVENUE
INVESTIGATIONS PROGRAM

RE: Department of Revenue-Proposed Legislation-
Peace Officer Status for Welfare Fraud Warrant Service

Dear Rick:

I am writing to advise you that I support the proposed legislation which would provide for peace officer status for welfare fraud warrant service. It is my understanding that the proposed legislation would grant peace officer status with the powers of search, seizure, and arrest for the enforcement and investigation of laws relating to public assistance and vendor payment.

I believe that this change would improve the efficiency of your department and in addition, would reduce the work load of local law enforcement officials, who are having difficulty in obtaining funding to hire an adequate staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith D. Haker", is written over the word "Sincerely,".

KEITH D. HAKER
CUSTER COUNTY ATTORNEY

KDH:tsc

cc: Brent Richlen, Investigator
Department of Revenue

J. ALLEN BRADSHAW

Granite County Attorney

BOX 490

PHILIPSBURG, MONTANA 59858

PHONE 406 - 859 - 3541

December 7, 1988

To Whom It May Concern

Re: Peace Officer Status For Welfare Fraud Warrant Service

Gentlemen:

I am writing this letter to support proposed legislation, which I understand is being presented to give the Department of Revenue status as a Criminal Justice Agency and designating certain department employees as Peace Officers for the investigation and enforcement of laws relating to public assistance.

Quite often, I prosecute individuals who have violated welfare laws, the penalty of which constitutes the violation as a crime.

I feel it is vitally important that the employees handling the investigation of these violations be given full authority to make searches, seizures, and arrests, the same as any other Peace Officer working in the Criminal Justice system.

I would appreciate your response to my request of your support on this legislation.

Thanking you and awaiting your reply, I am,

Respectfully yours



J. Allen Bradshaw

JAB/bd

MISSOULA COUNTY

OFFICE OF THE ATTORNEY
MISSOULA COUNTY COURTHOUSE
MISSOULA, MONTANA 59802
TELEPHONE (406) 721-5700

ROBERT L. DESCHAMPS III
COUNTY ATTORNEY

SENATE JUDICIARY
EXHIBIT NO. 3, p. 10
DATE 1-5-89
BILL NO. SB 21

December 6, 1988

RECEIVED

DEC 08 1988

DEPARTMENT OF REVENUE
INVESTIGATIONS PROGRAM

Rick Day
Department of Revenue
Investigation Bureau
Old Livestock Building
Helena, MT 59620

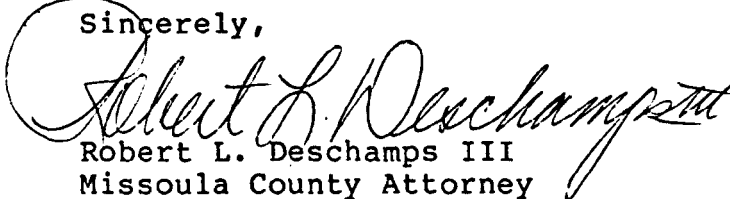
Dear Rick:

I recently learned that the Department of Revenue is considering seeking legislation making Investigation Bureau Investigators peace officers, at least while acting within the scope of their duties. Please be advised that I strongly support this legislation as it appears to me that it is wasteful of our limited resources to require Department of Revenue personnel to have to deal with local law enforcement agencies to do such mundane tasks as apply for and execute search warrants.

Frankly I feel that Department of Revenue Investigation Bureau Investigators ought to be peace officers for all purposes since there are frequently occasions when their status as sworn peace officers could be a great assistance to other law enforcement agencies. Limiting their peace officers status to specific areas of responsibility only confuses the matter and creates problems when they act in areas that are not clearly within the realm of their duties.

If I can do anything more to assist in this endeavor, please do not hesitate to contact me and I would be happy to do whatever I can.

Sincerely,


Robert L. Deschamps III
Missoula County Attorney

RLD/gkm

PUBLIC ASSISTANCE FRAUD PROSECUTION
Major case review 1988

SENATE JUDICIARY

EXHIBIT NO. 3 p. 11

DATE 1-5-89

BILL NO. SB 21

Yellowstone County- defendant pled guilty to felony theft (fraudulently obtaining public assistance) and was sentenced to six years deferred imposition, placed on probation and ordered to pay \$7,040 as restitution. The defendant had failed to report his wife's employment at the Billings Deaconess Hospital.

Valley County- defendants pled guilty to felony theft (fraudulently obtaining public assistance) and were sentenced to 5 years in prison. The sentence was suspended provided the defendants be placed under supervision, pay restitution of \$17,965 with \$10,000 paid in advance and 5 days in jail. The defendants failed to report \$675 a month and a \$10,425 lump sum workman's compensation payments.

Butte-Silverbow County- defendant pled guilty to felony theft (fraudulently obtaining public assistance) and was sentenced to 2 years deferred imposition, placed under supervision and ordered to pay \$6,911 as restitution. The defendant failed to report her daughter's social security payments for about 2 1/2 years.

Yellowstone County- defendant pled guilty to felony theft of public assistance and was sentenced to 10 years in prison. The sentence was suspended provided the defendant was placed on the intensive supervision probation program, and paid \$3,624 as restitution. The defendant failed to report a \$10,000 insurance settlement check.

Butte-Silverbow County- defendant pled guilty to felony fraudulent obtaining of public assistance. Imposition of sentence was deferred for six years provided the defendant was placed under supervision and paid \$24,243 as restitution. For 3 years the defendant had failed to report monthly social security benefits ranging from \$700 to \$800.

Lewis & Clark County- defendant pled guilty to felony theft of public assistance and was sentenced to 10 years in prison with all but 20 days suspended provided the defendant pay \$5,229 in restitution (125% of the public assistance fraudulently obtained), and perform 250 hours of community service. The defendant failed to report income from three employers during a 1 1/2 year period.

Fergus County- defendant pled guilty to felony theft of public assistance. Imposition of sentence was deferred for 6 years provided the defendant was placed under supervision and paid \$4,094 as restitution plus 10%. The defendant failed to report her and her husband's income for about one year.

Butte / Silver Bow

Who gets welfare in Butte? A profile emerges

By Jim Tracy
Standard Staff Writer

Welfare recipients in Butte are mostly men between the ages of 26 and 50.

Many moved here looking for a job and most have been on general assistance for six months or less.

That's the profile that is beginning to emerge from a survey conducted by a committee that is studying the local welfare system. Chief Executive Don Peoples hopes to use results of the survey and other information to present to an interim legislative task force that is conducting hearings on welfare statewide.

Welfare and welfare reform are likely to dominate discussion at the 1989 Legislature.

Peoples says he wants to make sure the state group has precise information on Butte-Silver Bow, which is one of 12 counties with welfare departments operated by the state.

Although the local survey is not yet complete, preliminary findings indicate that most welfare recipients would work given the opportunity.

Nearly half of the respondents said they are receiving general assistance for one reason: They can't find a job.

Researcher Wendi Hubacka has interviewed 177 people and hopes to

talk to another 50 or so to finish the survey. That would represent nearly half of the people the State Department of Social and Rehabilitation Services office in Butte has on its general assistance rolls.

Hubacka's findings are somewhat skewed since she has interviewed mostly people who have recently applied for general assistance and been referred to a state-funded work program operated by the AFL-CIO and known as Project For People.

But she said she hopes to get a more balanced picture of welfare recipients with her next set of interviews.

In a report to the local committee Wednesday morning, Hubacka noted that men receiving GA outnumbered women 151 to 26.

Among the men, 59 were between the ages of 35 and 50; 49 were between 26 and 35; 25 were 18 to 25 and 18 were over 50.

Sixteen of the women interviewed were 18 to 25.

Eighty-two, or 46 percent of the respondents, said they were on welfare because they couldn't find a job; 30, or 17 percent, said they lacked the education and skills to land a job; 27, or 15 percent, said they needed welfare because of personal or social circumstances; and 15, or 8 percent, said they suffered from medical problems.

Nearly 80 percent, or 140 of the respondents, said they had been receiving general assistance for one to six months. Only 12 responded that they had been on GA for over two years.

Asked how long they had lived in Butte, 43 said less than a month, 44 said one to six months, 15 said six months to a year, eight said one to two years, and 31 said over two years.

Thirty-six of the respondents, or 20 percent, have lived in Butte all their lives, and 54, or 30 percent, had left Butte and returned.

Where did they come from? According to the survey, 104 moved here from out of state and 37 from elsewhere in Montana.

Washington was the last stop before Montana for 11 of the respondents. Ten moved here from California, nine from Wyoming, eight from Oregon, seven each from Idaho and Arizona and six each from Colorado and Nevada.

Helena was listed as the previous residence by nine respondents, Billings was listed by eight and Missoula by six.

But no matter where they came from, 134 said they wanted to make Butte their home. Only 18 said they didn't plan to stay in Butte and 25 were undecided.

Questions about employment produced mixed results.

Fifty-seven answered that they had been employed for more than two years and 55 said they had been employed for six months or less.

Asked why their most recent job ended, 54 said they had been laid off, 51 quit for personal reasons, 41 said the job was only temporary, 13 said they were fired and 12 said they quit for health reasons.

Only six said they had never had a job. Only 47 said they had received unemployment benefits.

Asked what prevented them from finding employment, 49 replied that there were "no jobs."

Thirty-seven said they lacked the skills and education to get a job, 21 cited low wages paid at the available jobs, 20 said they lacked the transportation, clothing or tools needed for a job, and 14 responded that they were disabled.

Others offered more personal reasons for not having a job. One said he couldn't get along with other people. Another mentioned a prison record. Still another cited racial discrimination.

Fifty respondents said the lack of jobs was the major barrier to employment for most people. Another 45 cited lack of skills; 26 said they were unmotivated; 14 offered that minimum wage jobs don't pay as much as general assistance; and 11 said laziness was a barrier to employment.

Survey suggestions:

'Bust' frauds, find jobs

People surveyed by Wendi Hubacka, a researcher for the chief executive's task force on welfare, also were asked what they would do to improve the system.

They were asked: "What recommendations would you make to legislative leaders on how to reduce general assistance costs and make a more balanced budget?"

Here is a sampling of their answers:

- Workfare is a form of harassment ... wages and salaries are not essential.
- Bust the people who defraud the system. ... Get rid of the ones who are ripping off the system. ... Make them a spectacle for everyone else so it won't happen so much.
- Teach social workers what's available in training and teach them how to spot drug abuse and mental illness. ... Recognize what's going on with these people.
- You need to bring in jobs, even if it's for minimum wage, and find investors.
- Cut general assistance to rent alone and work out deals with renters, but still keep Food Stamps.
- Check out the general assistance people and make sure they are legitimate. ... Have people checked out more thoroughly.
- Create more jobs and cut back on how much GA is given to people.
- Have a percentage pay-back if a person receives over and above personal needs.
- Create more jobs where the employer pays part of the wages and the government pays part.
- Send the foreigners back to their own country.

Ready for life of leisure

Firefighters checked for wages

EXHIBIT NO. 7, p. 1
DATE 1-5-89
BILL NO. SB 21

The Investigations Bureau was established in 1973. The Bureau is funded through federal, liquor revolving, video gaming, and general fund sources. Welfare and Medicaid fraud investigations receive either 50% or 75% federal match depending on the type of fraud. Liquor and gaming investigation activities are designed to 1) protect the public health, welfare, and safety and 2) assure the \$10.5 million in gaming tax and 17 million in liquor system net profit and taxes.

I. Number and type of investigations initiated, completed or closed.

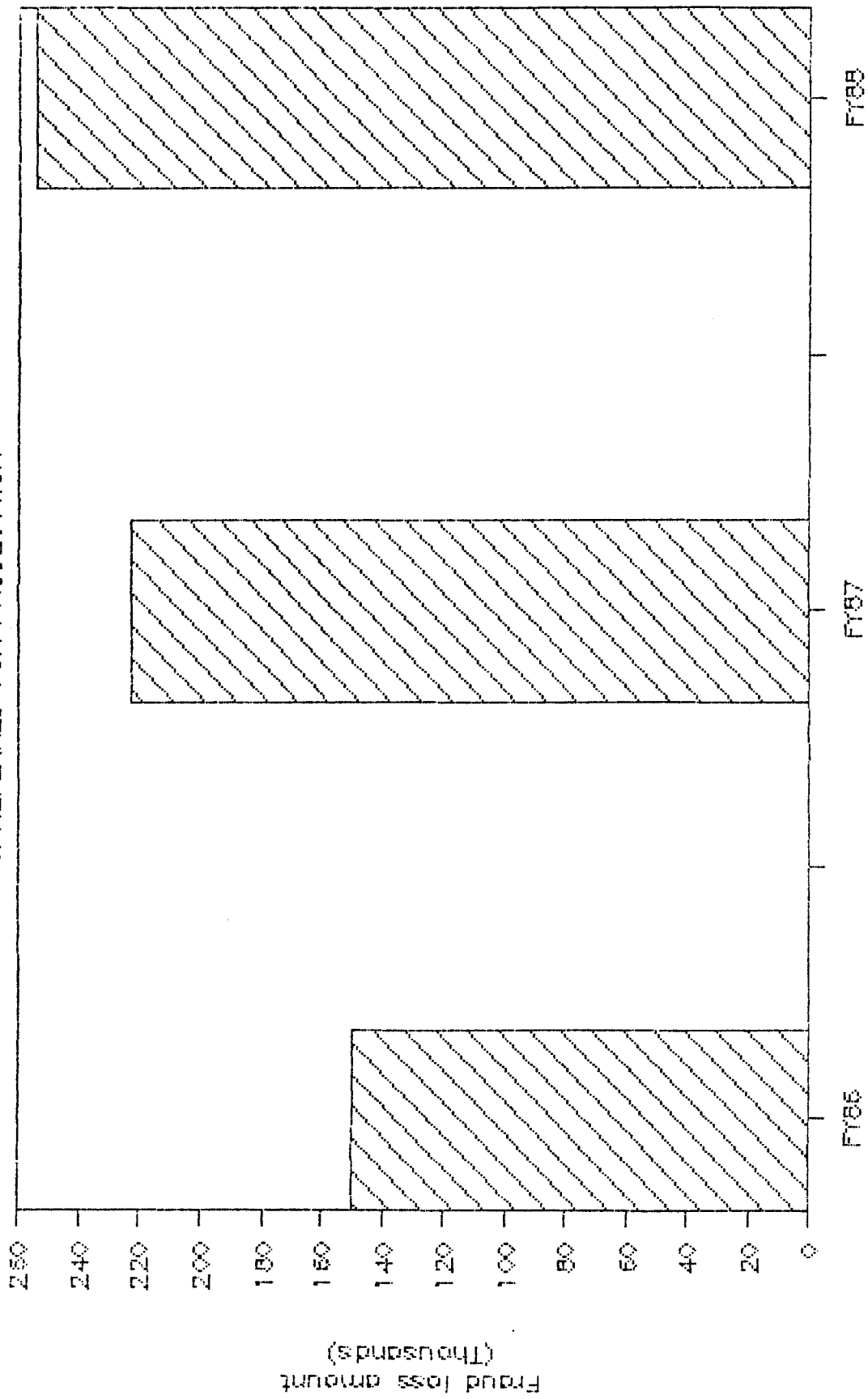
	Completed		Opened		Closed		Issued	
	FY87	FY88	FY87	FY88	FY87	FY88	FY87	FY88
Welfare Fraud			187	200	161	161		
Medicaid Fraud			1	2	0	0		
Video Gaming								
Inspections	859	1933						
Violations							7	39
Warnings							54	302
Backgrounds	288	198						
Special Invest			87	314	60	235		
Liquor								
Inspections	54	139						
Violations							42	38
Warnings							62	95
Special Invest			100	94	78	85		
Backgrounds	1451	1738						
License Invests			619	642	651	522		
Local Law Enforcement Assist			15	11				
Totals	2652	4008	1009	1263	950	1003	165	474

	FY87	FY88
Welfare Fraud Criminal Convictions	32	24
Collections-Expenses		
Dollar loss of fraud investigated and referred for prosecution	\$222,640	\$254,516
Court ordered restitution or collection	\$128,774	\$107,766
Food stamp savings Automatic disqualification	\$ 17,280	\$ 12,960
TOTALS	\$368,694	\$375,242
Program Expenses (federal & state)	\$189,822	\$206,165

WELFARE FRAUD INVESTIGATIVE ACTIVITY FY86-88

FISCAL YEAR	REQUESTS FOR PROSECUTION NUMBER	LOSS AMOUNT	RESTITUTION	NEW CASES	CLOSED CASES
FY86	61	\$149,634.97	\$105,505.29	148	497
FY87	57	\$222,640.07	\$128,774.03	187	161
FY88	74	\$254,516.11	\$107,765.55	200	161
Totals	192	\$626,791.15	\$342,044.87	535	819

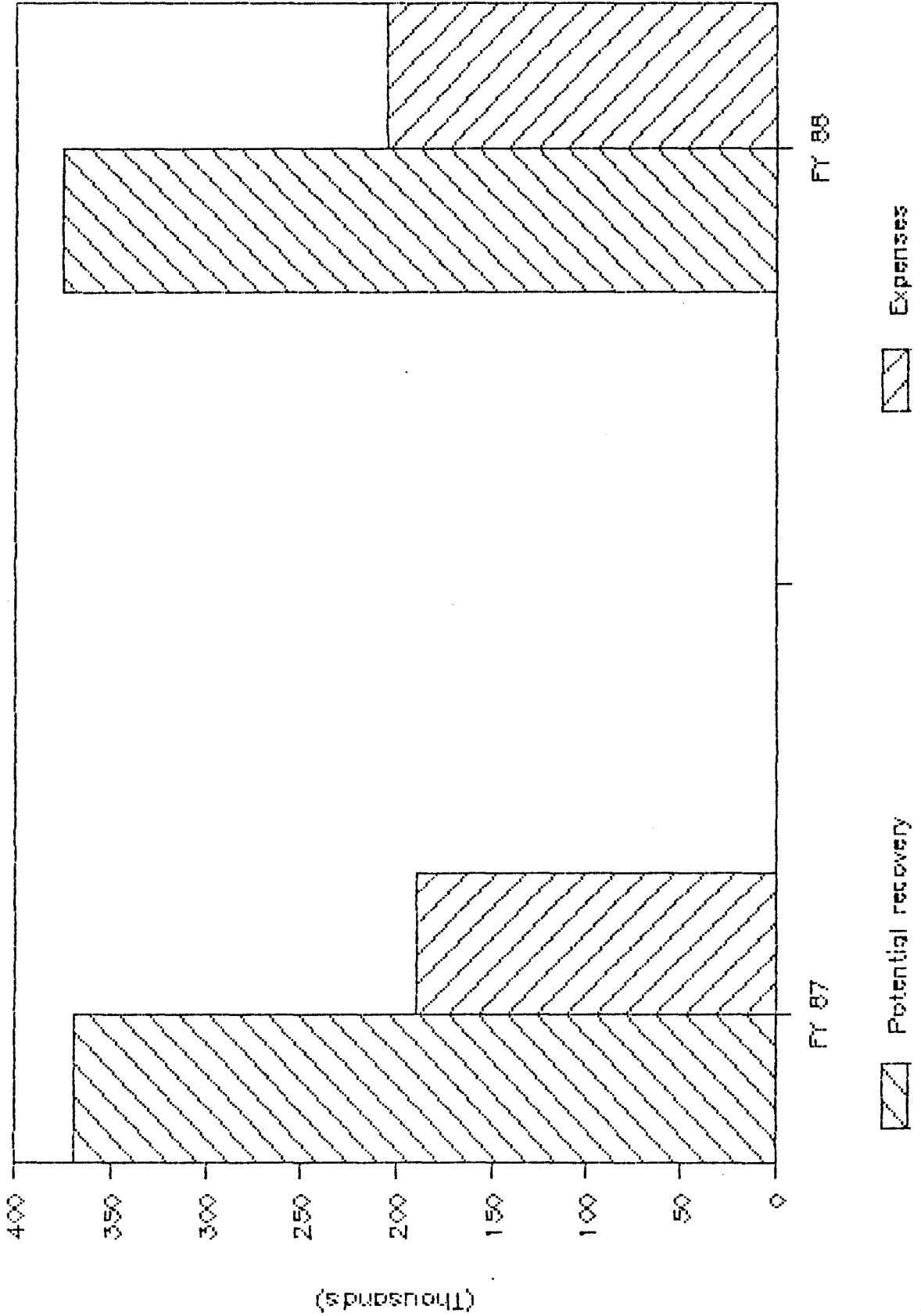
\$ LOSS OF WELFARE FRAUD INVESTIGATED & REFERRED FOR PROSECUTION



Fiscal years 85-88

FRAUD INVESTIGATIONS POTENTIAL RECOVERY

VS. EXPENSES FY87 & FY88



DEPARTMENT OF REVENUE
Investigations Bureau

A D M I N I S T R A T I V E
M A N U A L

SECTION: ADMINISTRATION

DATE: 1-5-89
BILL NO. SB 21

SUBJECT: Firearms Policy

PURPOSE:

- 1) To recognize investigator peace officer status.
- 2) To authorize investigator discretion concerning concealed weapons.
- 3) To clarify use of deadly force.
- 4) To establish standards for investigator qualification and training.
- 5) To standardize weaponry carried by investigators.

AUTHORITY:

By authority of the Montana Codes Annotated, investigators for the Montana Department of Revenue, Investigations Bureau, are designated peace officers and as such are authorized by state law to carry concealed weapons. Sections 16-11-141, 23-5-605, and 44-11-101, MCA.

POLICY:

The Department recognizes peace officer status is a full time designation, and the investigators are subject to the rights and responsibilities associated with that status.

The Department recognizes in some circumstances weapons are necessary for the protection of the investigators and others. Therefore, the policy sets forth requirements for the carrying of weapons by investigators.

The policy is not intended to authorize the carrying of weapons during the normal course of daily duties. The necessity for carrying firearms shall be left to investigator discretion and be based upon the particular situation.

The investigator trainee or probationary investigator will be prohibited from carrying weapons without specific approval from the Bureau Chief.

DEPARTMENT OF REVENUE
Investigations Bureau

A D M I N I S T R A T I V E
M A N U A L

SECTION: ADMINISTRATION
DATE 1-5-89
BILL NO. SB 21

SUBJECT: Firearms Policy

Before an investigator is allowed to carry a weapon, the following requirements must be met:

- 1) The investigator must have successfully completed basic firearms training and qualification at the Montana Law Enforcement Academy.
- 2) The investigator must have successfully completed yearly firearms training and qualification as provided by the Department.

Weapon Restrictions

The investigator may carry any weapon provided it is no smaller than .38 calibre. It must be a revolver or semiautomatic with barrel length of 2" to 6". Shotguns will not be carried by the investigator; however they may be required when assisting other law enforcement personnel. Familiarity with the shotgun is desirable and periodic shotgun training will be provided by the Department.

Discharge of Weapon

Any time an investigator discharges his/her weapon in the line of duty (excluding training), a complete report describing the reason for the discharge will immediately be provided by the investigator to the Bureau Chief.

Use of Deadly Force

Use of force, likely to cause death or severe bodily injury, may only be used if the investigator believes such force is necessary to prevent imminent serious bodily harm or death to him/herself or others or to prevent the commission of a forcible felony. Sections 45-3-101 and 45-3-102, MCA.

DATE 1-5-89

BILL NO. SB 21

DEPARTMENT OF REVENUE
Investigations Bureau

A D M I N I S T R A T I V E
M A N U A L

SECTION: ADMINISTRATION

SUBJECT: Firearms Policy

If possible all reasonable alternatives to the use of deadly force must be considered.

Warning shots are strictly prohibited. The only time a weapon will be discharged in the line of duty is when the situation meets the requirements of Sections 45-3-101 and 45-3-102, MCA.

Firearms Safety.

In order to protect him/herself and others from serious injury through accidental discharge, the investigator will handle his/her weapon in a safe manner at all times.

The Department's firearms instructor will be in charge of all firearms training and qualification and shall have the authority to remove or restrict anyone from the firing line at such training.

Approved



Rick Day
Investigations Bureau Chief

POSITION DESCRIPTION

1. Current Classification Title: Revenue Investigator I
Class Code: 168150
Grade: 13
Position Number: 4121

Proposed Classification Title: Revenue Investigator II
Class Code: 168151
Grade: 14
Position Number: 4121

2. Department of Revenue
Investigations & Enforcement Division
Investigations Bureau
3. Old Livestock Building
Helena, Montana 59620
(406) 444-2846
4. Name of Employee: Tom Oberweiser
Prepared By: Management and Employee
5. Duties And Responsibilities Of Work Unit

The primary function of the investigators of the Department of Revenue, Investigations & Enforcement Division, is the investigation of matters pertaining to alcoholic beverage control (16-1-101, MCA), fraudulent obtaining of public assistance (53-2-107, MCA), tobacco tax enforcement (16-11-141, MCA), food stamp trafficking (45-6-312, MCA), medicaid fraud (53-6-111, MCA) and video gaming control (23-5-601, MCA). Other investigations are performed as the director may deem necessary relating to department regulations and for gathering information related to criminal or civil action to which the department or the State of Montana is a party.

6. Describe The Duties And Responsibilities Of The Position

Senior investigators are designated as peace officers with full authority of arrest, search and seizure. Receives referrals from the central office and supervisors which contain requests for regulatory activities and investigation of suspected violations of departmental regulations or state laws, or requests for services as called for by the Director of DOR or the Governor's Office. Independently investigates matters involving alcohol beverage, tobacco tax, welfare fraud, food stamp trafficking, video gaming control in an assigned area. Maintains the highest level of personal honesty and professional integrity.

OATH OF OFFICE

STATE OF MONTANA
Lewis & Clark

County of _____

Thomas Oberweiser

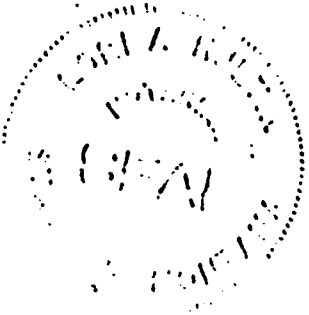
I, _____ do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office (_____ Revenue Investigator I _____) with fidelity (so help me God).

Sworn to and subscribed before me this 5th day of _____, A. D. 1989

Thomas Oberweiser

Joseph A. Justice

Stelena M





STATE OF MONTANA

DEPARTMENT OF REVENUE INVESTIGATION DIVISION

IN SERVICE TRAINING FIREARMS TRAINING AND QUALIFICATION

CERTIFICATION THAT INVESTIGATOR Tom Oberwiser HAS SUCCESSFULLY
COMPLETED TRAINING IN THE USE OF THE HANDGUN AND POLICE SHOTGUN ON AUGUST 3, 1988
IN HELENA, MONTANA

QUALIFICATION SCORE 96 %

MIKE OTTERBERG
FIREARMS INSTRUCTOR
MONTANA DEPT. OF REVENUE
INVESTIGATIONS BUREAU

COMMENTS:

EXH NO. 4

DATE 1/5/89

BILL NO. SB21 DATE: 1/5/89

NAME: Chuck O'Reilly

ADDRESS: Sheriffs Office - 2 + C Co.

PHONE: _____

REPRESENTING WHOM? Met Sheriffs & Peace Officers Assn

APPEARING ON WHICH PROPOSAL: SB21

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE

1/5/89

COMMITTEE ON

Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo
WALLY JEWELL	MONT. MAG. ASSOC	23	X	
BRENDA NORDLUND	MONT WOMEN'S LOBBY	22	X	
John Connor	Attorney General's Office	23		
Michael Sheppard	MTLA			
Greg Ferguson	Senator	23	X	
Jeff Miller	Dept of Revenue			

(Please leave prepared statement with Secretary)