

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on March 14, 1991, at 8:10 a.m.

#### ROLL CALL

**Members Present:**

Bill Strizich, Chairman (D)  
Vivian Brooke, Vice-Chair (D)  
Arlene Becker (D)  
William Boharski (R)  
Dave Brown (D)  
Robert Clark (R)  
Paula Darko (D)  
Budd Gould (R)  
Royal Johnson (R)  
Vernon Keller (R)  
Thomas Lee (R)  
Bruce Measure (D)  
Charlotte Messmore (R)  
Linda Nelson (D)  
Jim Rice (R)  
Angela Russell (D)  
Jessica Stickney (D)  
Howard Toole (D)  
Tim Whalen (D)  
Diana Wyatt (D)

**Staff Present:** John MacMaster, Leg. Council Staff Attorney  
Jeanne Domme, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

#### HEARING ON SB 321 EXPAND BENEFITS UNDER CRIME VICTIMS ACT TO INCLUDE DUI VICTIM AND FAMILY

**Presentation and Opening Statement by Sponsor:**

**SEN. FRITZ, SENATE DISTRICT 28,** stated that SB 321 establishes a DUI victims compensation account. He stated that it is very similar to the existing crime victims compensation account and if the money runs out of one the other can be withdrawn from. SB 321 will allow the state to compensate victims of DUI accidents both in and out of the state.

Proponents' Testimony:

Ed Hall, Administrator - Board of Crime Control, stated that SB 321 provides a means to compensate the innocent victims of DUI accidents. He stated that there are only three states in the union that do not participate in the DUI program for victims. It was his sincere hope that Montana is not the last state to participate in the program. He stated that the bill allows for innocent victims, who are hurt in DUI accidents, be compensated by the state of Montana up to \$25,000 through an additional charge on DUI convictions. He felt that if the state of Montana participates in the program there is a federal program that is similar which will allow Montana to recapture, each year, 40% of the state expenditures for all victims compensation, not just victims of DUI. Mr. Hall stated that the Board of Crime Control suggested a technical amendment. EXHIBIT 1

Cheryl Bryant, Crime Victims Unit, gave written testimony in favor of SB 321. EXHIBIT 2

Pat Bradly, Montana Magistrates Association, gave written testimony in favor of SB 321. EXHIBIT 3

Opponents' Testimony: NONE

Questions From Committee Members:

REP. BROOKE asked Ed Hall if he has looked at the amendments proposed by the Montana Magistrates Association? Mr. Hall stated that he didn't know the exact wording of the amendments.

REP. BROOKE stated that they add the language in the division of the fine to the DUI compensation.

Ed Hall stated that he is concerned about that particular funding mechanism but he felt the program does need to be funded in some manner.

REP. TOOLE asked Pat Bradly if the JP's and lower courts object to any kind of surcharge regardless of the purpose of the money spent? Ms. Bradly stated that the Magistrates do resist all surcharges. She stated that it is very difficult for the courts to separate it out and also the fact that they do not want to keep financing state government.

Closing by Sponsor:

SEN. FRITZ stated that if the committee adopts SB 132 the state will be able to be adopted into the Federal program. He asked the committee for a favorable consideration.

**HEARING ON SB 379**  
**PEACE OFFICER STATUS FOR PROBATION AND PAROLE OFFICERS**

**Presentation and Opening Statement by Sponsor:**

**SEN. VAN VALKENBURG, SENATE DISTRICT 20,** stated that would grant probation and parole officers the status of peace officers and provide that the Board of Crime Control would establish minimum standards for training of probation and parole officers; thereby, set up a situation where the Department of Institutions would contract with the Montana Law Enforcement Academy to provide the training for them. He stated that this bill is necessary because there has been a market change in the role of probation and parole officers in the recent past. Probation and parole officers deal with nearly all felons in the courts they work and are dealing with case loads that are approximately 100 a piece across the state of Montana. He stated that they are providing a tremendous service to the citizens of the state and some of the most cost effect work that could be done in terms of our Criminal Justice System in the corrections process. Sen. Van Valkenburg stated that the type of people they work with are becoming more threatening and difficult to deal with. He stated that the peace officer status that is sought in the bill, will recognize the need for probation and parole officers to have limited law enforcement training. The training would be for two weeks at the Law Enforcement Academy and involve arrest procedure, search procedure and things that law enforcement officers need to know when dealing with felons in different situations.

**Proponents' Testimony:**

**Terry Minnow, Montana Federation of State Employees,** gave written testimony in favor of SB 379. **EXHIBIT 4.** She also gave letters of support from various people to be added into the record. **EXHIBIT 5**

**Mary Fay, Federation of Probation and Parole Officers,** stated that the Federation is asking that probation and parole officers be given the status of a peace officer. She stated that a two week course would provide probation and parole officers a great sense of confidence and reduce the risk that they fact every day at the present time. She urged the committee to give the bill a favorable consideration.

**John E. "BoBo" Kelly, Adult Probation/Parole Officer - Butte,** gave written testimony in favor of SB 379. **EXHIBIT 6**

**Gene Kaiser - Board of Crime Control,** stated that the Board of Crime Control is in support of SB 379 and he would be available for questions from the committee.

Opponents' Testimony:

Kurt Chisolm, Director - Department of Institutions, stated that he is concerned about giving probation and parole officers the peace officer status they are asking to receive. He stated that he wasn't aware that it was an issue with the field staff. He stated that there is no question that probation and parole officers get into police kinds of activities at times but they do have the power of arrest and the ability to search and siege without probable cause. He felt that this was a matter of a policy issue to force the department into more training experience for them. He stated that he could understand to up the ante in terms of the required training the probation and parole officers need to carry out their duties. He urged the committee to delete references in the bill that give probation and parole officers peace officer status. He stated that he is concerned about those individuals carry peace office status, who in his judgment, given their education and abilities, are not police officers or sheriff's or law enforcement officers in any way, shape, or form.

Dan Russell, Administrator - Division of Corrections, stated that SB 379 would mandate Montana's probation and parole officers be classified as peace officers and in order for them to become peace officers there is a need for more training. He stated that the bill has been amended, since introduced, and would require a condensed 2 week basic peace officer course be established for probation and parole officers. He stated that the Director of the Academy has stated that a curriculum could be developed on a contract basis, but a 2 week would cost approximately \$5,000. He stated that if the committee decides to pass the bill, they also need to provide a funding source for the training.

Questions From Committee Members:

REP. BROWN asked Mr. Chisolm if he intended to say that the probation and parole officers didn't voice their desire in regard to this bill before this piece of legislation was drafted? Mr. Chisolm said "yes, he did say that."

REP. BROWN stated that over the last couple of session he carried all the bills that preceded up to the point of this legislation and should have indicated some significant concern on the need to carry weapon in the course of duty for all the reasons given. He felt that should provide some evidence of their concern in this area. He asked Mr. Chisolm if he disagreed with those comments?

Mr. Chisolm stated that he was well aware of the fact Rep. Brown carried other legislation dealing with this issue. He stated that he was aware of probation and parole officers wanting to carry firearms and he felt that was the reason for this bill. He stated that the subject of receiving police officer status was never a major issue, as far as he was aware.

REP. BROWN asked Mr. Chisolm if he knows what the definition of a peace officer is in the statutes? Mr. Chisolm he said that he did not what the definition of a peace officer is.

REP. CLARK asked Mr. Chisolm what the status of probation and parole officers is in other states? Mr. Chisolm stated that he was not sure of the answer to his question.

REP. BROOKE asked Terry Minnow if these concerns of the probation and parole officers been heard by the administration and rejected through contract negotiations? Ms. Minnow stated that she didn't believe that police officer status could be granted through negotiations.

REP. WYATT asked Ms. Fay what number of women are probation and parole officers? Ms. Fay stated that 10 - 15% are female probation and parole officers.

Closing by Sponsor:

SEN. VAN VALKENBURG stated that unless it is put into statute for probation and parole officers to receive training and receive police officer status, it will not be done by the Department of Institutions. He stated that he hoped the committee would pass the bill.

HEARING ON SB 388  
FIREARMS POLICE FOR PROBATION AND PAROLE OFFICERS

Presentation and Opening Statement by Sponsor:

SEN. VAN VALKENBURG, SENATE DISTRICT 20, stated that SB 388 is a bill that would place in statute certain provisions regarding the authorization of probation and parole officers to carry firearms. He stated that this issue has been before the Legislature several times in the past and he wished it was unnecessary to bring it before the committee. He stated that the reason it became necessary to bring it before the committee, is because the Department of Institutions failed to appropriately implement legislative intent with respect of passage of a bill authorizing to carry a firearm by probation and parole officers in the last legislative session.

The Department of Institution has had an attitude, during the interim, that it wanted to restrict access to the carrying of weapons by probation and parole officers. He felt that the jobs probation and parole officers carry out for the citizens of Montana, is one that involves significant danger to them personally. He stated that access to weapons should not be unduly restricted.

Sen. Van Valkenburg stated the Department does have a policy which would allow the authorization for carrying weapons, but in

application it is virtually impossible for probation and parole officers to have access to weapons. He stated that it is particularly difficult for female officers to use weapons because under the current policy the type of weapons involved are impossible for some of the smaller female officers to carry and properly utilize. He stated that since the Senate hearing on the bill, the Department has seen the light of day. He felt they have been willing to discuss this matter more rationally. He told the Senate on the floor, that the passage of the bill might possibility result in the ability to consider changing the regulation the Department know has in its policy in respect to this and may or may not be necessary for these rules to be put in statutory form.

#### Proponents' Testimony:

REP. DAVE BROWN, HOUSE DISTRICT 72, stated that he is a strong proponent to SB 388.

Terry Minow, Montana Federation of State Employees, gave written testimony in support of SB 388. EXHIBIT 7

Mike McCarty, Missoula Probation and Parole Officer, stated that he has been a probation and parole officer for 18 years. He stated that he testified four years ago on a bill that was asking for us to carry firearms. He stated that probation and parole officers do a lot of work that involves arresting and charging. He stated that being able to carry a firearm would give probation and parole officers more confidence when they came across a situation that was not a normal occurrence. He asked the committee to pass the bill.

Ralph Fisher, Probation and Parole Officer, stated that he is in support of SB 388. He stated that probation and parole officers work in a dangerous field that calls for a weapon at certain times because most of their clients are convicted felons. He stated that probation and parole officer's lives are often threatened and need a firearms policy to assist in protecting themselves.

#### Opponents' Testimony:

Curt Chisolm, Director - Department of Institutions, stated that at the Senate hearing on SB 388 there was an emotional discussion. He stated that during that discussion he recognized the need for probation and parole officers to carry a weapon. He stated that the Department does have a very restricted policy in regards to firearms. He stated that there has been close to 400 requests to carry a firearm and not once has the Department turned any one of those requests down. He felt that their policy was working quite well. He stated that they received a letter from one of the parole officers in November of 1990 indicating a dissatisfaction with the policy and Mr. Russell responded by saying he thought the policy was working. He stated that he was

not aware of the strong displeasure of the firearms policy by the field staff. Mr. Chisolm stated that he was turned around by some of the more experienced probation officers' testimony. He stated that after the Senate hearing he told Sen. Van Valkenburg that if it was a legislative intent, the word "may" should be changed to "shall" in SB 388 and there will be no questions further asked about what the position of the legislature is for probation and parole officers to carry firearms.

Mr. Chisolm stated that he didn't think this bill was needed because the Department is willing to keep giving their probation and parole officers firearms when requested.

Dan Russell, Administrator - Divisions of Corrections, stated that he will be available for questions.

Questions From Committee Members:

REP. BROWN asked SEN. VAN VALKENBURG why shouldn't the committee change "may" to "shall"? SEN. VAN VALKENBURG stated that he felt we are in a transition phase between a Department that would do anything it could to resist allowance to carry firearms and act in the appropriate action given the nature of probation and parole officers work. He felt that the Department is beginning to understand the true nature of the work that the officers do and to carry firearms when necessary. He stated that there are instances where a officer should not carry firearms and if they cannot qualify for a firearms training course to properly use the weapons, then "shall" would be inappropriate. He stated that the state doesn't have qualification standards for probation and parole officer as for police officers. He stated that was what SB 379 was about.

REP. CLARK asked Dan Russell what are the current training requirements for carrying a firearm? Mr. Russell stated that it is 40 hour program that was designed specifically for probation and parole officers and is held at the Montana State Prison.

REP. LEE asked Mr. Walsh why is it a necessity for a probation and parole officer to carry a firearm? Mr. Walsh stated that he is constantly in situations where he has to defend himself from felons that carry firearms. There are many probation and parole officers in the country that are shot and killed.

Closing by Sponsor:

SEN. VAN VALKENBURG stated that he would urge the committee to pass the bill to the House Floor.

YOUTH IN PLACEMENT FACILITIES

Presentation and Opening Statement by Sponsor:

SEN. PINSONEAULT, SENATE DISTRICT 27, stated that SB 432 clarifies responsibility for supervision of youth in placement facilities. He stated that the bill relates specifically to after care treatment. The bill defines the language as to who the responsibility falls on for the children that are in after care treatment. He stated that the bill also deals with the kids that are released from after care treatment with mental problems.

Proponents' Testimony:

Ann Gilkey, Legal Counsel - Department of Family Services, gave written testimony in favor of SB 432. EXHIBIT 8

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor: NONE

EXECUTIVE ACTION ON SB 432

Motion: REP. BROWN MOVED SB 432 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON HB 934

Motion: REP. BROOKE MOVED HB 934 DO PASS.

Motion: REP. BROWN moved to amend HB 934 by sending the bill down to appropriations for funding.

Discussion:

REP. BROWN stated that appropriations will have to decide whether to appropriate or not.

REP. BROOKE stated that she is against the amendment. She felt that the amendment is an interesting concept but she felt the bill should be sent out of the committee as proposed.

REP. MEASURE stated that he objects to the amendment. He stated that he has worked with the system in Missoula and understands the problem. He felt that the study should be looked at before



it is sent down to appropriations to be funded.

REP. BROWN stated that the reason he made his motion is because the last Judicial study done in the area was in 1981. He felt that the caseloads in most of the districts haven't change since that time according to the Judges he talked with about whether the study should be done or not.

Vote: Motion failed 8 to 10. EXHIBIT 9

Motion/Vote: REP. JOHNSON MOVED HB 934 DO PASS. Motion carried 19 to 1 with Rep. Brown voting no.

EXECUTIVE ACTION ON SB 441

Motion: REP. BROOKE MOVED SB 441 BE CONCURRED IN.

Motion: REP. BROOKE moved to amend SB 441.

Discussion: REP. BROOKE stated that her amendment would divide the geographical areas of the bill into 10 judicial districts on each side of the state.

Vote: Motion carried.

Motion: REP. BROOKE MOVED SB 441 BE CONCURRED IN AS AMENDED.

Motion: REP. BECKER moved to amend SB 441 on page 3, line 2, to include the word "consecutive".

Motion/Vote: REP. MEASURE MADE A SUBSTITUTE MOTION to amend SB 441 to strike the language in subsection 2 of section 2, which would allow no limitation on the number of terms that one could serve. Motion carried 15 to 5 with Rep's: Clark, Messmore, Johnson, Boharski, and Nelson voting no.

Motion/Vote: REP. BROOKE MOVED SB 441 BE CONCURRED IN AS AMENDED. Motion carried 19 to 1 with Rep. Clark voting no.

EXECUTIVE ACTION ON SB 1

Motion: REP. STICKNEY MOVED SB 1 BE CONCURRED IN.

Motion/Vote: REP. MEASURE moved to amend SB 1 with the proposed amendments by Sen. Mazurek. EXHIBIT 10. Motion carried.

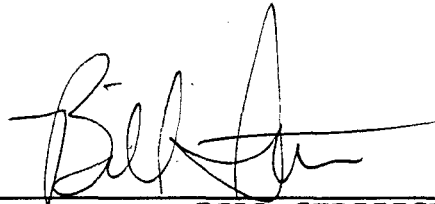
Motion/Vote: REP. MEASURE MOVED SB 1 BE CONCURRED IN AS AMENDED.  
Motion carried unanimously.

EXECUTIVE ACTION ON SB 361

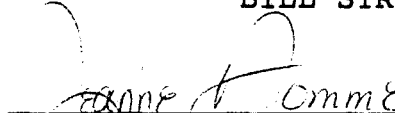
Motion/Vote: REP. WYATT MOVED SB 361 BE TABLED. Motion carried.

ADJOURNMENT

Adjournment: 11:48 a.m.



BILL STRIZICH, Chair



JEANNE DOMME, Secretary

BS/jmd

# HOUSE OF REPRESENTATIVES

## JUDICIARY COMMITTEE

ROLL CALL

DATE 3-14-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

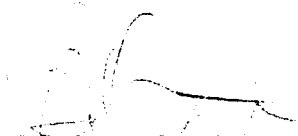
*Jennie  
Gommu*

HOUSE STANDING COMMITTEE REPORT

March 14, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that  
Senate Bill 432 (third reading copy -- blue) be concurred in  
and be placed on consent calendar.

Signed: 

Bill Stricich, Chairman

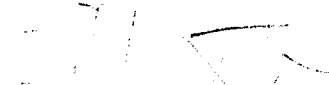
Carried by: Rep. Stricich

HOUSE STANDING COMMITTEE REPORT

March 14, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House  
Bill 934 (first reading copy -- white) do pass.

Signed:   
Bill Strickland, Chairman


3/14/91  
3:00pm  
BDF

# HOUSE STANDING COMMITTEE REPORT

March 14, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 441 (third reading copy -- blue) be concurred in as amended .

Signed: 

Bill Strizich, Chairman

Carried by: Rep. Toole

And, that such amendments read:

1. Title, line 6.

Strike: "LIMITING MEMBERS TO TWO TERMS;"

2. Page 2, lines 6 and 7.

Strike: "who" on line 6 through "state and" on line 7

Insert: "one from that part of the state that is composed of judicial districts 1 through 5, 9, 11, and 13 through 20 and one from that part of the state that is composed of judicial districts 6 through 8, 10, and 12 through 17"

3. Page 2, line 13.

Strike: "{1}"

4. Page 3, line 1.

Strike: "{2}"

5. Page 3, lines 1 and 2.

Strike: "A" on line 1 through end of line 2


2140  
3-18-91  
JDB

HOUSE STANDING COMMITTEE REPORT

March 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 1 (third reading copy -- blue) be concurred in as amended .

Signed:   
Bill Strizich, Chairman

*Copy. Rep. Measure*

And, that such amendments read:

1. Page 92, lines 17 and 18.

Strike: "A lessor aggrieved under [section 77(1)]"

Insert: "If a lessee under a lease contract defaults as described in [section 77] or, if agreed, after other default by the lessee, a lessor"

2. Page 100, line 2.

Strike: "After"

Insert: "If"

3. Page 100, lines 2 through 4.

Strike: "has wrongfully" on line 2 through "[section 49])" on line 4

Insert: "under a lease contract defaults as described in [section 77(1) or (3)(a)] or, if agreed, after other default by the lessee"

4. Page 100, line 6.

Strike: "sections 81 and"

Insert: "section 81 or"

EX. 1

EXHIBIT

1

DATE

3-14-91

HB

321

Amendments to Senate Bill No. 321  
Third Reading Copy

By Request of the Montana Board of Crime Control

1. Page 4, line 19-20. Strike: "convicted of a violation of 61-8-401, 61-8-406, or a similar statute of another state; or"

Insert: "operating the vehicle under the influence as defined in 61-8-401 (4) or 61-8-406, MCA;"



*Cheryl Bryant*

EXHIBIT 2  
DATE 3-14-91  
~~SB~~ 321

TESTIMONY FOR SB 321

SB 321 makes several changes in the Crime Victims Compensation Act. The three major changes this bill would make are:

1. compensate victims of drunk drivers
2. follow Montana residents out of state
3. eliminate the family exclusion.

The number of claims that will be filed by DUI victims is unknown but awards are estimated at 15 a year. The Highway Patrol figures for 1989 indicate there were 76 fatal accidents and 2126 injury accidents involving alcohol. It is certain that not all of these victims will apply for benefits or be eligible for benefits.

This bill provides two funding mechanisms. It leaves in place the current system which is working well. The claims that are already being paid will not be denied because the money has been used on DUI claims. A separate fund for DUI claims is provided from a mandatory surcharge on intoxicated drivers.

There is also a procedure that will allow a transfer between funds at the end of a fiscal year if claims have not been paid. The statute is not clear as to whether this is an automatic transfer between funds or if the claims to be paid can be considered before making the transfer. The funding source would be sufficient if collection is made as estimated.

To be a federally approved program, the federal government also requires that a state compensate its citizens if the citizen is injured in a state that does not have a crime victims program that will pay compensation. At the present time, that means three states, Maine, South Dakota and Nevada. Nevada has a compensation

Ex. 2  
3-14-91  
SB 321

program but only compensates its own residents. Nevada may change its law if it can secure funds to pay the claims it has now. Legislation is pending in Maine and South Dakota to enact a compensation law. There will probably not be many claims in this category.

The family exclusion has been deleted. Again, to be federally approved, the federal government will not allow a state to deny benefits based on the living arrangements of the victim and offender, even if there is an exception for an award in the interests of justice. Benefits can be denied on any other basis or if an award would unjustly benefit the offender. The program must make rules defining unjust enrichment to the offender.

There are other federal requirements that are not present in the bill. The program will be required to make rules on outreach efforts on the Indian reservations. This can be done. The federal government will require extensive reporting on the claims and payments. This can be done also.

EXHIBIT 3

DATE 3-14-91

HB 321

# Montana Magistrates Association

March 14, 1991, SB 321, before House Judiciary committee; testimony by  
Pat Bradley for the MMA

The MMA is a proponent of the concept of SB 321, but an opponent of the method of funding the idea by compelling courts to assess a new tax of \$35.

Judges are particularly aware of the human cost of crime victims. We have supported this worthy cause with understanding and the money that keeps this current fund healthy. The crime victims fund has a current balance of some \$700,000, and receives another \$400,000 yearly from revenue from our courts.

I would like to express three points:

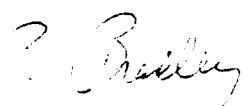
1. The limited jurisdiction court is the workhorse of the judiciary branch of government. Justice Jean Turnage acknowledged this in his State of Judiciary address to you in January when he stated the third tier of courts handled over 300,000 cases last year. A court is a court, whether the Supreme or Justice or City.

Those who are looking for funding believe our courts provide an ongoing financial resource. We resist unending attempts to make judges an extension of the legislative branch, or a tax-collection agency. It undermines the true functions of the judiciary. Courts represent a forum where the theory of justice becomes a reality to the majority of the public. To impose a sentence on a person, and then assess an additional tax adds insult to injury to both court and defendant.

2. In 1987, the legislature passes a law drafted by our own judges to streamline a very cumbersome accounting system. That law, HB 740, eliminated a 24-page bookkeeping manual and repealed or amended 64 statutes that had burdgeoned over the years dealing with fines and forfeitures. It may be thought that our accounting system is not a big deal or a legislative concern, but in fact, it is both. It is a major cost and time component of what courts do, and it provides to state and local governments several million dollars every year. Our current bookkeeping allows us to simply send to the county treasurer all money we collect. The county splits it 50-50 between themselves and the state. City courts retain all revenue in the city treasury. This accounting system is very important to court efficiency and should be to the legislature as well. Compelling courts to again assess and account for surtaxes reverses legislation you enacted in 1987.

3. There is a way to fund a DUI Victim Compensation fund which can provide any amount of money you wish to give it, and would not involve courts in the legislative taxation process. Attached are amendments that the MMA offers to provide for this funding. Section 3-10-601 is the result of HB 470.

We ask your favorable consideration of our amendments and ask that you use the money the courts send to the treasury in any way you see fit. We also reiterate our request that you do not require us to assess surtaxes, and just let judges be judges.

  
Thank you.

# Montana Magistrates Association

March 14, 1991, before the House Judiciary Committee

To amend SB 321 as follows:

Amend to strike: page 6, lines 7-8 "(2) Fines imposed under 61-8-714(7) and 61-8-722(7) must be paid into the DUI victims compensation account."

Amend to strike: page 11, lines 21-25 "(7) In addition to any fine imposed under subsection (1), (2), or (3), THE COURT SHALL ORDER a person convicted of a violation of 61-8-401 to pay \$35 to the Clerk of Court to be deposited in the DUI victims compensation fund provided for in 53-9-109."

Amend to strike: page 13, lines 20-24, (7) In addition to any fine imposed under subsection (1), (2), or (3), the court shall order a person convicted of a violation of 61-8-406 to pay \$35 to the clerk of court to be deposited in the DUI victims compensation fund provided for in 53-9-109."

Amend to add as Section 4, and move all sections to an advanced numerical order, the following:

**3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Each justice of the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county wherein he holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) All fines, penalties, and forfeitures that this code requires to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated.

(3) The county treasurer shall, in the manner provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the state treasurer; and

(b) 50% to the county general fund.

(4) The state treasurer shall distribute money received under subsection (3) as follows:

(a) 23% to the state general fund;

(b) 10% to the fish and game account in the state special revenue fund;

(c) 12.5% to the state highway account in the state special revenue fund;

(d) 36% to the traffic education account in the state special revenue fund;

(e) 0.6% to the department of livestock account in the state special revenue fund;

(f) 16.9% to the crime victims compensation ~~account in the state special revenue fund; and~~ and DUI victims compensation

account in the state special revenue fund; and  
(g) 1% to the department of family services special revenue account for the battered spouses and domestic violence grant program.

History: En. Sec. 2, Ch. 84, L. 1917; re-en. Sec. 4930, R.C.M. 1921; re-en. Sec. 4930, R.C.M. 1935; amd. Sec. 9, Ch. 491, L. 1973; amd. Sec. 4, Ch. 420, L. 1975; amd. Sec. 15, Ch. 344, L. 1977; R.C.M. 1947, 25-307; amd. Sec. 1, Ch. 557, L. 1987.

The above distributions can be altered by the legislature to provide funding requested of the crime victim and DUI victim compensation accounts.



# MONTANA FEDERATION OF STATE EMPLOYEES <sup>SB 379</sup>

P.O. Box 1246

AFT, AFL-CIO  
Helena, Montana 59624

 ARTCRAFT, BUTTE

EXHIBIT 4  
DATE 3-14-91

(406) 442-2123  
JIM McGARVEY  
President



TESTIMONY OF MONTANA FEDERATION OF STATE EMPLOYEES IN FAVOR OF SB 379, BILL TO GRANT PEACE OFFICER STATUS TO PROBATION AND PAROLE OFFICERS, GIVEN BEFORE HOUSE JUDICIARY COMMITTEE ON MARCH 14, 1991

The Montana Federation of State Employees, AFT, AFL-CIO strongly supports SB 379, the bill to grant peace officer status to probation and parole officers. We would like to thank Senator Van Valkenburg for agreeing to sponsor this important bill.

I won't testify at length about the importance and appropriateness of SB 379. The probation and parole officers who have travelled here today will do a good job of explaining the need for the bill. I will instead respond to the concerns that will probably be raised by the Department of Institutions.

The Department of Institutions will try to kill this bill by saying it will cost an astronomical amount of money. The Department of Institutions uses this argument every time it will work to their advantage. At the same time, on other bills like SB 174, the bill to require continuing education for licensure of psychologists, the Department of Institutions testified for the bill and testified that the costs of additional training for psychologists working for the state are no problem. The key difference is that under SB 174, the Department of Institutions will require state employees to pick up the additional training costs out of their already inadequate paychecks--while this bill will require the state to pay the training costs.

We urge you to listen to this bill and judge it on its merits. We believe the issue of additional workers compensation premiums is a red herring. When we called Workers Comp, we were told that a change in status won't necessarily cause an increase in fees. If the classification of probation officers doesn't change, the workers comp fee shouldn't change.

Because probation officers will be better trained, this bill may ultimately save the state money. The state of Montana and its probation officers will be less likely to be sued if they are adequately trained to carry out their job duties.

We didn't attach an appropriation to this bill. The cost of the training is included in the appropriations bill for a supervision fee on probationers and parolees and a career ladder for probation and parole officers.

We ask that you give SB 379 a speedy "Do Pass" recommendation. Thank you for your consideration.

# County of Yellowstone



JUSTICE COURT

P.O. Box 35032  
Billings, Montana 59107

EXHIBIT 5  
DATE 3-14-91  
FILE 379

March 12th, 1991

TO: 1991 MONTANA STATE LEGISLATURE

RE: ADULT PROBATION OFFICERS AND LAW ENFORCEMENT STATUS

Please support legislation that will give adult probation and parole officers law enforcement status.


In their duties and functions, adult probation officers are constantly dealing with dangerous offenders in our Montana communities. The probation men and women have the difficult job of monitoring a segment of our society that is both growing steadily in numbers and degree of corruption. The day has arrived that it is crucial for probation officers to obtain the full status of law enforcement officers.

At the present, the laws require great responsibility of adult probation officers to carry out the monitoring of sentences and parole and probation requirements dealt out by the criminal justice system and courts. Their job is a difficult one in that the type of people in the criminal element of our society has become more and more dangerous and attitudes are much more difficult to handle than when I took office 12 years ago as a judge.

It has become evident to me that we expect the men and women who are monitoring a socially ill part of society to do so without regard to their safety and without giving them the legal authority through legislation to act in fullness of the protection of the law enforcement status that would allow them to effectively carry out their responsibilities.

Please give your support to legislation that will formalize the law enforcement status of probation officers. It is crucial.

Sincerely,

  
\_\_\_\_\_  
Judge, Justice Court



**CITY OF BILLINGS**  
**POLICE DEPARTMENT**  
P.O. BOX 1554  
BILLINGS, MT 59103

Exhibit # 5  
3/14/91 SB 379

March 1, 1991

1991 MONTANA LEGISLATORS  
Helana, Montana 59601

Dear Montana Legislators:

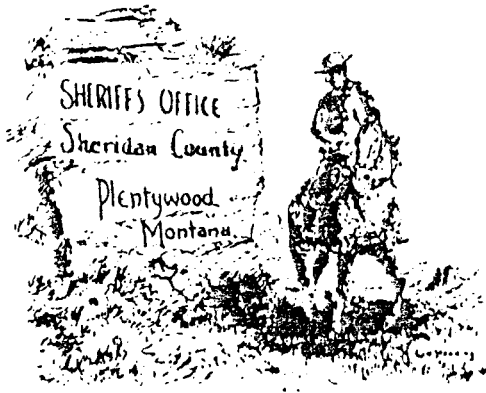
I am writing to indicate my support for Montana State Parole/Probation Officers to have Peace Officer Status in the State of Montana and to carry concealed firearms.

I appreciate your consideration in this matter. Thank you.

Sincerely,

ORAN J. PECK  
Chief of Police

OJP/pmd



## SHERIFF DAVE CHRISTMAN

(406) 765-1200  
PLENTYWOOD, MONTANA 59254

August 27, 1990

TO: THE MONTANA LEGISLATURE  
FROM: DAVE CHRISTMAN, SHERIDAN COUNTY SHERIFF  
RE: PEACE OFFICERS STATUS FOR ADULT PROBATION AND PAROLE OFFICERS

As Sheriff of Sheridan County, Montana, I am considerably involved in criminal arrests.

As Sheriff, I frequently work with members of the Adult Probation and Parole Office. Probation and Parole Officers perform many of the same duties as those of Peace Officers. Therefore, I see no reason for the distinction between the two offices.

I would strongly urge the members of the Montana Legislature to pass whatever laws necessary to grant State Probation and Parole Officers full status as Peace Officers.

Sincerely,

*Dave Christman*  
Dave Christman, Sheriff  
Sheridan County  
Plentywood, Montana



*Office of The*  
Sheridan County Attorney

COURTHOUSE BUILDING  
100 WEST LAUREL AVENUE  
PLENTYWOOD, MONTANA 59254  
(406) 765-2310

August 29, 1990

TO: THE MONTANA LEGISLATURE

FROM: STEVEN HOWARD, COUNTY ATTORNEY  
SHERIDAN COUNTY, MONTANA

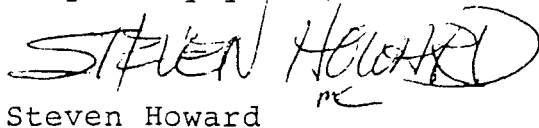
RE: PEACE OFFICER STATUS FOR ADULT PROBATION/PAROLE  
OFFICERS

I am the County Attorney in Sheridan County, Montana and deal with criminal prosecution on a daily basis.

As the county attorney, I work with members of Montana's Adult Probation and Parole Bureau. I believe that the current distinction between probation/parole officers and peace officers limits the effectiveness of our probation/parole officers. In many instances probation/parole officers perform the same functions as those performed by peace officers.

Accordingly, I urge the members of the Montana Legislature to pass whatever laws necessary to grant State probation/parole officers full status as peace officers.

Very truly yours,

  
Steven Howard

po.829

V.G. KOCH  
COUNTY ATTORNEY

OFFICE OF  
COUNTY ATTORNEY

RICHLAND COUNTY  
COURTHOUSE — BOX 1587  
SIDNEY, MONTANA 59270  
(406) 482-2505

Exhibit # 5  
3/14/91 SB 379

Deputies  
PHILLIP N. CARTER  
GARY BALAZ

August 22, 1990

TO: THE MONTANA LEGISLATURE

FROM: JOSEPH E. THAGGARD, DEPUTY COUNTY ATTORNEY,  
RICHLAND COUNTY

RE: PEACE OFFICER STATUS FOR ADULT PROBATION/PAROLE  
OFFICERS

I am a Deputy County Attorney in Richland County, Montana, and am heavily involved in criminal prosecution.

As a criminal prosecutor, I frequently work with members of Montana's Adult Probation and Parole Bureau. I believe that the current distinction between Probation/Parole Officers and Peace Officers serves no useful purpose. Ultimately, Probation/Parole Officers perform many of the same functions as those which Peace Officers perform.

Accordingly, I urge the members of the Montana Legislature to pass whatever laws necessary to grant State Probation/Parole Officers full status as Peace Officers.

Sincerely,



JOSEPH E. THAGGARD  
DEPUTY COUNTY ATTORNEY

JETk

COUNTY COMMISSIONERS  
DON PETERSON  
District One  
RAY HARBIN  
District Two  
GERALD L. NEWGARD  
District Three

TREASURER  
PATRICIA J. COOK

CLERK AND RECORDER  
SURVEYOR  
LORIN JACOBSON

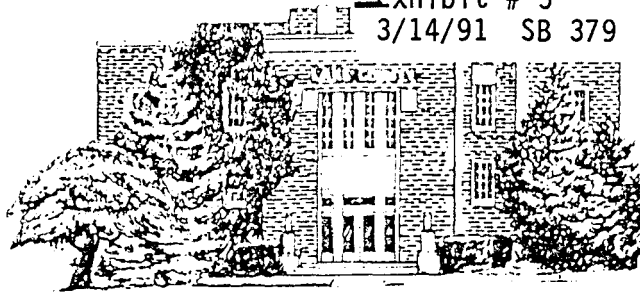


Exhibit # 5  
3/14/91 SB 379

ASSESSOR  
LENORE A. ROAT

SHERIFF AND CORONER  
JOE GELDRICH

CLERK OF COURT  
KATHERINE E. PEDERSEN

SUPERINTENDENT OF SCHOOLS  
GLENNADENE FERRELL

COUNTY ATTORNEY  
LARRY J. NISTLER

JUSTICE OF THE PEACE  
CHUCK WHITSON

## LAKE COUNTY

PHONE 406/883-6211 • 106 FOURTH AVENUE EAST • POLSON, MONTANA 59860

October 2, 1990

1991 Legislative Assembly  
Helena MT 59620

STATE OF MONTANA  
COMMISSIONER DIV.  
RECEIVED  
OCT 23 1990  
MISSOULA, MT

Dear Members:

I hope you will support the proposed measure giving  
Montana Probation and Parole officers, peace officer status.

They are presently a very important part of law enforcement  
but could benefit greatly from training in such things as  
search and seizure, laws of arrest, and firearms training.

By passing this bill it would allow the Probation and Parole  
officer to legally carry firearms. This would allow them to  
better protect themselves when dealing with high risk  
individuals in their respective communities.

Thank you for your consideration.

Respectfully yours,

Chuck Whitson  
Justice of the Peace  
Lake County Courthouse  
Polson MT

CW/gtj

ROY M. DELONG  
Commissioner

JOHN MUSTER  
Commissioner

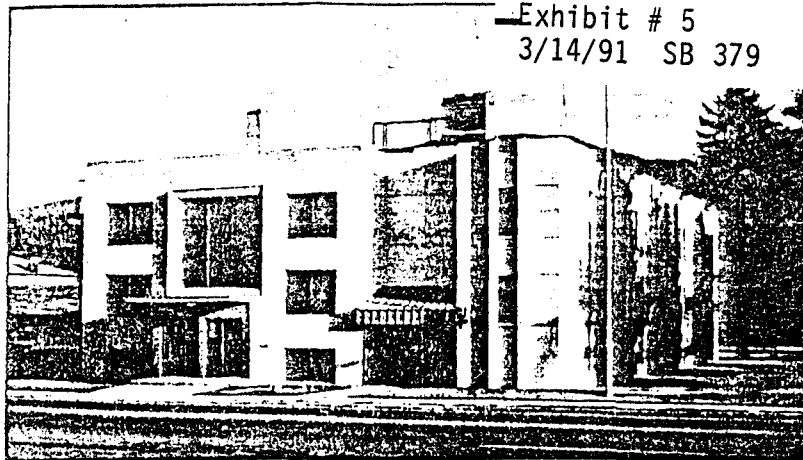
NORMAN E. RESLER  
Commissioner

DIXIE VAUGHT  
Clerk & Recorder

JUNE M. THAYER  
Treasurer - Supt. of Schools

PATRICIA N. ELDRIDGE  
Assessor

Exhibit # 5  
3/14/91 SB 379



LISA FERKOVICH  
Clerk of District Court

ROBERT SLOMSKI  
Attorney

WILLIAM J. ALEXANDER  
Sheriff

DIANNE K. FRANKE  
Administrator

MARK A. DENKE  
Coroner

ROBERT BEITZ  
Justice of the Peace

# COUNTY OF SANDERS

STATE OF MONTANA

P.O. Box 519  
Thompson Falls, Montana 59873

October 29, 1990

Representative Jim Elliott  
100 Trout Creek Rd  
Trout Creek, MT 59874

NOV 01 1990

Dear Representative Elliott:

Regarding peace officer status for Probation/Parole Officers.

Although I do not know at this time who the sponsors will be or what the bill number will be, I am informed that the Montana Adult Probation and Parole Officers will be actively pursuing peace officer status this legislative session.

As I am sure you are aware, Montana Adult Probation/Parole Officers are employed by the Montana Department of Institutions to supervise convicted felons who are on probationary sentences or parole. Due to a number of factors, such as overcrowding in our state prison system, a desire to control expenses to the taxpaying public, harsher sentences being imposed by the courts, particularly in drug cases, and many other reasons, there has been a move toward more community based supervision of criminal offenders. The work load and responsibilities of our Montana Adult Probation/Parole Officers has increased accordingly. Recently, in recognition of their law enforcement authority, Montana Adult Probation/Parole Officers have been authorized to carry firearms, particularly in situations in which they assist law enforcement authorities in making searches and arrests of convicted felons under their jurisdiction.

For a number of reasons, the Montana Adult Probation/Parole Officers are seeking peace officer status thorough legislation which will proposed in the coming legislative session. Peace officer status would mean additional training for Adult Probation/Parole Officers, as well as additional benefits to the Probation/Parole Officers. The benefits to the people of the State of Montana, and to the citizens of Sanders County in particular, of peace officer status for Montana Adult Probation/Parole Officers, would be having additional trained law enforcement personnel with full law enforcement authority to supervise convicted criminal offenders in our community. As Sanders County Attorney, I support full peace officer status for our Montana Adult Probation/Parole Officers, and I urge you to support legislation in the coming session to that end.

Very truly yours,



Robert Slomski  
Sanders County Attorney

/ss

ROY M. DELONG  
Commissioner

JOHN MUSTER  
Commissioner

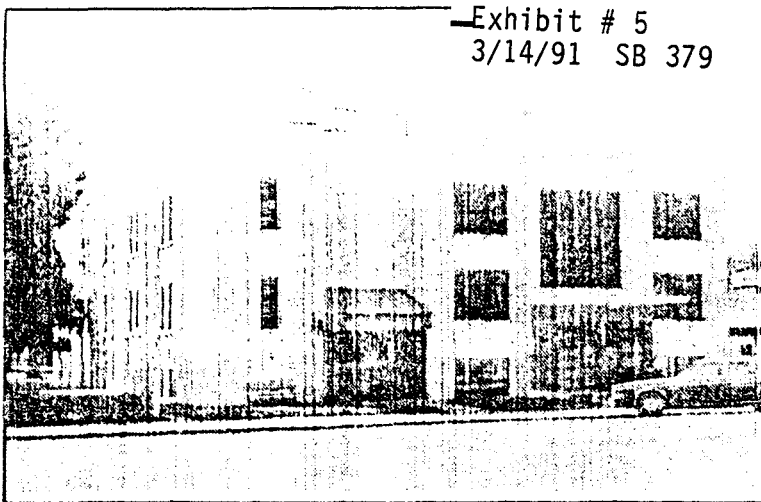
NORMAN E. RESLER  
Commissioner

DIXIE VAUGHT  
Clerk & Recorder

JUNE M. THAYER  
Treasurer - Supt. of Schools

PATRICIA N. ELDRIDGE  
Assessor

Exhibit # 5  
3/14/91 SB 379



LISA FERKOVICH  
Clerk of District Court

ROBERT SLOMSKI  
Attorney

WILLIAM J. ALEXANDER  
Sheriff

DIANNE K. FRANKE  
Administrator

MARK A. DENKE  
Coroner

ROBERT BEITZ  
Justice of the Peace

# COUNTY OF SANDERS

## STATE OF MONTANA

P.O. Box 519  
Thompson Falls, Montana 59873  
October 3, 1990

TO WHOM IT MAY CONCERN:

I very strongly support and encourage giving Probation and Parole Officers peace officer status for several reasons:

I believe they need this for their protection.

I also believe they should attend at least Basic law academy to see what our law officers go through to put these people away.

Peace officer status for Probation and Parole Officers has my complete support.

Sincerely,

BILL ALEXANDER, Sheriff  
Sanders County Sheriff's Dept.

BA:df

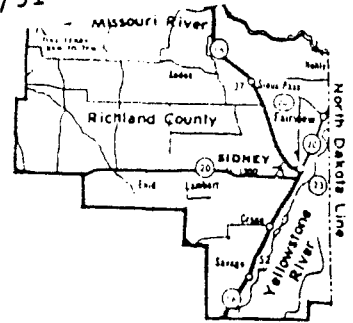


## Sheriff Donald J. Tiffany

Richland County Sheriffs' Dept.  
110 2nd Ave. N.W.  
Sidney, Montana 59270

Phone 482-2919

Exhibit # 5  
3/14/91 SB 379



August 23, 1990

To: Montana Legislature

From: Donald J. Tiffany, Richland County Sheriff

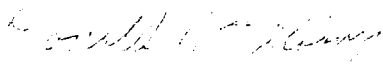
Re: Peace Officers Status for Adult probation and Parole Officers.

I am the Sheriff of Richland County, Montana and I frequently work with officers of Montana's adult probation and parole Bureau.

Probation & parole officers perform many of the same duties as peace officers perform. I believe that there is no useful purpose in the current distinction between peace officers and adult probation and parole officers.

I urge the Montana Legislature to pass the laws that are necessary to grant full peace officer status to Montana's adult probation parole officers.

Sincerely,

  
Donald J. Tiffany,  
Richland County Sheriff.

DJT/lj

**GREGORY P. MOHR**

*Richland County Justice of the Peace*

*123 West Main - Sidney, MT 59270  
(406)482-2815*

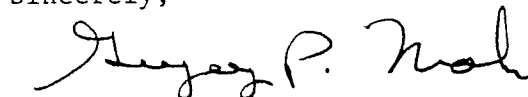
August 23, 1990

TO: THE MONTANA LEGISLATURE  
FROM: HONORABLE GREGORY P. MOHR, JUSTICE OF THE PEACE/CITY JUDGE  
RE: PEACE OFFICER STATUS FOR ADULT PROBATION/PAROLE OFFICERS

As Justice of the Peace of Richland County and City Judge for the City of Sidney, I work quite often with Montana's Department of Probation and Parole. This working relationship is a key element in the progress made in my Court. In working closely with the Adult Probation/Parole Officer, I am familiar with the problems they encounter. I see a great need for the Probation and Parole Officers to have full Peace Officer's status.

In counties such as mine, the local law enforcement officials are drastically understaffed and with current budget constraints and tax problems, the situation will not improve. A Probation and Parole Officer with full Peace Officer status would be an asset. I urge you to pass whatever legislation necessary to accomplish this task.

Sincerely,



Gregory P. Mohr  
Justice of the Peace/City Judge

GPM/bp





Exhibit # 5  
3/14/91 SB 379

## *State of Montana Thirteenth Judicial District*

POST OFFICE BOX 35042 BILLINGS, MONTANA 59107

G. TODD BAUGH  
DISTRICT JUDGE - DEPT. 5

March 8, 1991

BIGHORN COUNTY  
CARBON COUNTY  
STILLWATER COUNTY  
YELLOWSTONE COUNTY

To Whom It May Concern:

As a district judge I am somewhat familiar with the state probation and parole officers and their functions as an integral part of the law enforcement team. As the law enforcement officers that have the last contact with those convicted of crimes before they are returned to society, probation and parole officers are a very important part of the team that tries to protect the citizenry from the criminal element.

As such, these men and women deserve the support, training, backing, survivor and retirement benefits and liability protection that they will be accorded with limited duty peace officer status under SB379.

I urge your support for this legislation.

Yours truly,

A large, stylized handwritten signature of G. Todd Baugh, written in black ink, with a long horizontal stroke extending to the right and a large loop at the bottom.

G. TODD BAUGH  
District Judge

GTB:pb



BUTTE-SILVER BOW  
OFFICE OF CHIEF EXECUTIVE  
COURTHOUSE  
BUTTE, MONTANA 59701

~~Exhibit # 5~~  
3/14/91 SB 379

AREA CODE 406  
PHONE 723-8262

January 9, 1991

TO; The 1991 Montana Legislature  
Capitol Station  
Helena, Montana 59601

SUBJECT: Peace Officer Status for Adult Probation/Parole  
Officers

As Chief Executive of Butte-Silver Bow, I strongly urge you to pass legislation allowing the Montana Probation/Parole Officers peace officer status. I have had 17 years of experience in community corrections as a probation/parole officer and as Executive Secretary of the Board of Pardons.

The supervision of probationers and parolees is a very demanding job and peace officer status for the Probation/Parole Officers would provide better training and improve morale for the officers. The Probation/Parole Officers provide a valuable and needed service to the State of Montana, especially now with prison overcrowding and increased case loads. This legislation would greatly benefit the law abiding citizens of Montana.

Sincerely,

Jack Lynch  
Chief Executive

mp

**PRESIDENT**

Bob Butorovich  
Butte, MT 59701  
782-4224

**PAST PRESIDENT**

Jim Dupont, Deputy Sheriff  
Kalispell, MT 59901  
752-6161



**SECRETARY-TREASURER**

Tony Harbaugh, Sheriff  
1010 Main Street  
Miles City, MT 59301  
Office: 232-2237  
Home: 232-6299

OFFICIAL PUBLICATION  
"THE MONTANA SHERIFF AND PEACE OFFICER"

# *Sheriffs and Peace Officers Association*

OFFICE OF THE SECRETARY

**1st VICE PRESIDENT**

Rickard Ross  
Billings, MT 59101  
256-2927

Debbie Willis  
Adult Probation and Parole Officers Assn.  
P. O. Box 1884  
Billings, Mont. 59103

Nov. 19, 1990

**2nd VICE PRESIDENT**

Barry Michelotti  
Great Falls, MT 59401  
761-6842

**3rd VICE PRESIDENT**

Jack Barney  
Lewistown, MT 59457  
538-3415

Debbie,

**BOARD OF DIRECTORS  
SHERIFFS**

Jay Printz 363-3033  
Hamilton, MT 59840

Tim Solomon 265-2512  
Havre, MT 59501

Mike Schafer 256-2925  
Billings, MT 59101

Rick Later 683-2383  
Dillon, MT 59725

Joe Geldrich 883-4321  
Polson, MT 59860

I was advised by Les Osborne at our meeting in Billings, last week that you had not received a letter in regards to your request for support of your legislative proposal.

At our Board of Directors meeting in Great Falls, in August, a motion was made and passed to support your efforts to achieve Peace Officer status in the 1991 Legislature.

**UNDERSHERIFFS AND  
DEPUTIES**

Tom Frank 752-6161  
Kalispell, MT 59901

Jim Cashell 585-1485  
Bozeman, MT 59715

Les Osborne 323-1402  
Roundup, MT 59072

Greg Hintz 721-5700  
Missoula, MT 59801

Bill Fleiner 443-1010  
Helena, MT 59601

Sincerely,

A handwritten signature in dark ink, appearing to read "Tony Harbaugh".

Sheriff Tony Harbaugh

Sec.-Treas.

M. S. P. O. A.

EXHIBIT 60  
DATE 3-14-91  
~~SB~~ 379

March 14, 1991

1991 Montana Legislature  
House Judiciary Committee  
State Capitol Building  
Helena, MT

Re: SB 379

Honorable Committee Members:

Probation/Parole Officers provide services that greatly benefit the law-abiding citizens of Montana. Officers supervise adults who have committed felonies and are either placed on supervised probation by a district court judge or granted parole from prison by the parole board. Officers have the authority to arrest, conduct searches of clients, their automobile and residence, do investigations, carry firearms, and many other duties. There are currently over 4,000 people being supervised by 48 officers.

Of the 48 officers, located around the state, over one-third of them have, like myself, less than two years experience as a Probation/Parole Officer. Morale among the officers is extremely low and many are considering leaving the field. Peace Officer status would be a great morale booster and help retain experienced, qualified officers.

Prior to becoming a Probation/Parole Officer, I was employed at Montana State Prison for six and a half years as a Correctional Officer, a Correctional Technician, and as a Correctional Treatment Specialist. I find it very ironic that before one can work at Montana State Prison, one must complete 120 hours of basic training. A Probation/Parole Officer, on the other hand, receives 12 hours of "training" at the Central office in Helena and given a tour of Montana State Prison in Deer Lodge. The "training" consisted of completing payroll and tax forms, watching several videos, a tour of the Central Office, and a pep talk by the head of the Department of Corrections to enroll in the deferred compensation payroll plan. With all of the duties and responsibilities entrusted to a Probation/Parole Officer,

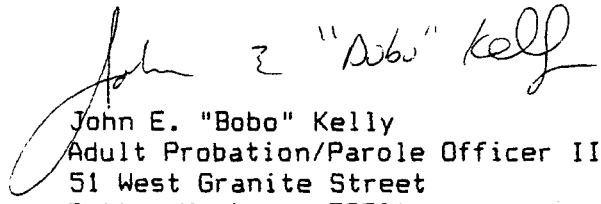
EX. 6  
3-14-91  
SB 379

House Judiciary Committee  
Page 2

the lack of training is unsettling, to say the least. Peace Officer Designation would enable the officers to receive the training they need.

I urge you to support SB 379. The cost of this bill is minimal and the advantages to the State of Montana are great.

Respectfully submitted:

A handwritten signature in cursive script that reads "John E. 'Bobo' Kelly". The signature is written in dark ink and is positioned above the printed name and address.

John E. "Bobo" Kelly  
Adult Probation/Parole Officer II  
51 West Granite Street  
Butte, Montana 59701  
Phone: 723-8911



# MONTANA FEDERATION OF STATE EMPLOYEES

AFT, AFL-CIO

P.O. Box 1246

Helena, Montana 59624

(406) 442-2123

 ARTCRAFT, BUTTE

JIM MCGARVEY  
President



TESTIMONY OF TERRY MINOW, MONTANA FEDERATION OF STATE EMPLOYEES,  
GIVEN BEFORE THE HOUSE JUDICIARY COMMITTEE IN SUPPORT OF SB 388,  
MAR. 14, 1991

Mr. Chairman, members of the committee, my name is Terry Minow. I represent the Montana Federation of State Employees, which includes the Mt. Federation of Probation and Parole Officers.

I rise in strong support of SB 388, and thank Senator Van Valkenburg for bringing this important issue before you today.

During the 1989 legislative session, an amendment to the MCA was passed. The statute became effective July 1, 1989, and state "Authorizes Probation and Parole Officers to carry firearms, including concealed firearms, when necessary. The Department shall adopt rules establishing firearm training requirements and procedures for authorizing the carrying of firearms."

The 1989 legislation was a compromise between the Department of Institutions, which was dead set against probation and parole officers carrying firearms, and the officers, who insisted that they first receive firearms training and then be allowed to carry firearms for their own others safety.

The bill, as amended, was a "trust me" bill. The Department of Institutions said "trust us--we will develop a workable firearms policy." What the Department came up with instead is a firearms policy that is cumbersome and ineffective, a firearms policy so poorly designed that it hinders the work of probation and parole officers.

There are several officers here today to testify for the bill and to testify about the current firearms policy. They are professionals, with college degrees, working in a dangerous field. They receive firearms training, and an additional sixteen hours of training a year, because they had legislation introduced and passed requiring that training. They are already trained in the use of firearms.

Please listen carefully to their testimony. These are the state employees who supervise approximately 4,000 adult probationers and parolees in your home towns. Their average caseload is between 89 and 90. Their clients are convicted felons. Their supervision saves Montana millions in incarceration fees--their supervision protects our communities--their goal is to assist their clients in becoming law-abiding, productive members of the community.

But when their lives are threatened, as they too often are, the state of Montana owes them a fair, workable firearms policy. Please give SB 388 a "Do Pass" recommendation.

Thank you.

# DEPARTMENT OF FAMILY SERVICES

EXHIBIT 8DATE 3-14-91SB 432

STAN STEPHENS, GOVERNOR

(406) 444-5900

## STATE OF MONTANA

P.O. BOX 8005  
HELENA, MONTANA 59604

March 14, 1991

### TESTIMONY IN SUPPORT OF SB 432

"AN ACT TO CLARIFY THE RESPONSIBILITY OF DFS AND OF YOUTH  
PROBATION OFFICERS REGARDING THE SUPERVISION OF YOUTH IN  
PLACEMENT FACILITIES . . ."

Submitted by Ann Gilkey, Legal Counsel  
Department of Family Services

The Department of Family Services requested SB 432 to address some specific problems that have haunted the juvenile corrections system for, at least, the past few years.

Section 1 of SB 432 addresses an apparent confusion in some judicial districts regarding who has supervisory responsibility for youth in need of supervision and delinquent youth who are placed in residential care other than Pine Hills or Mountain View Schools.

Existing law provides that the department supervise youth placed in either of the youth correctional facilities. Probation is to supervise youth placed in any other placement. Although this sounds clear, in practice this law is less than clear to all who attempt to interpret it. Section 1 will clarify that probation shall supervise all youth in need of supervision and delinquent youth who are not placed in either Mountain View or Pine Hills, regardless of who has custody of the youth or where the youth is placed. This section also clarifies what "supervision" entails.

Section 2 addresses a second and possibly even more frustrating problem that the agency has encountered over the years. As the population at youth correctional facilities (specifically Pine Hills) continues to grow unchecked and there continues to be no alternative placements for youth who are having difficulty remaining in their communities, there also continues to be inappropriate placements of youth at the correctional facilities.

Many of the inappropriate placements are of youth who are primarily mentally ill, not primarily delinquent. When a youth in this population exhibits behaviors so outrageous as to require a mental health commitment, the institutions have been petitioning the court for a mental health commitment order and then discharging the youth from the correctional facility. The problem of who is responsible for the mentally ill youth then arises. Probation is equipped to supervise youth in need of supervision (status offenders) and delinquent youth prior to

their commitment to a youth correctional facility. Pine Hills and Mountain View staff supervise the youth while they reside in the correctional facilities. Aftercare is designed to supervise youth who have improved enough to be returned to the community with minimal supervision and are consequently released from the correctional facility.

Mentally ill delinquent youth returning to their communities from a mental health facility via a youth correctional facility are not addressed by law. These kids fall into one of the proverbial "gaps in the system".

SB 432 takes the first step in addressing who will supervise these youth upon initial release from the correctional facility. The temporary aftercare agreement will ensure that if the youth runs away from the mental health facility or is discharged directly into the community, DFS aftercare workers will have the legal authority to supervise the youth until the youth is returned to the committing court for further disposition, as is already provided by law. (Section 41-5-523 (1)(j), MCA) The judge can then make a determination of whether the youth has been "cured" at the mental health facility and can return to the correctional facility, return to his community, or requires additional, alternative treatment or placement.

SB 432 is a positive step toward addressing concerns that confront the Department of Family Services and the youth court on a regular basis. The Department encourages your careful consideration of SB 432 and solicits your support in making it law.



## HOUSE OF REPRESENTATIVES

## JUDICIARY COMMITTEE

## ROLL CALL VOTE

EXHIBIT 9DATE 3-14-91HB 934DATE 3-14-91 BILL NO. HB 934 NUMBER \_\_\_\_\_MOTION: Blown amend.

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR		—
REP. ARLENE BECKER	—	
REP. WILLIAM BOHARSKI		—
REP. DAVE BROWN	—	
REP. ROBERT CLARK	—	
REP. PAULA DARKO	—	
REP. BUDD GOULD	—	—
REP. ROYAL JOHNSON		—
REP. VERNON KELLER	—	
REP. THOMAS LEE		—
REP. BRUCE MEASURE		—
REP. CHARLOTTE MESSMORE	—	
REP. LINDA NELSON		—
REP. JIM RICE		—
REP. ANGELA RUSSELL		—
REP. JESSICA STICKNEY	—	
REP. HOWARD TOOLE	—	—
REP. TIM WHALEN		—
REP. DIANA WYATT		—
REP. BILL STRIZICH, CHAIRMAN	—	
TOTAL	8	10

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Unif. Comm'n.

EXHIBIT 10DATE 3-14-91SB 1

## AMENDMENT 1

Section 2A-524 of the Article is amended to read:

§ 2A-524. LESSOR'S RIGHT TO IDENTIFY GOODS TO LEASE  
CONTRACT. *§ 78*

(1) ~~A lessor aggrieved under Section 2A-523(1)~~  
*a*  
After default by the lessee under the lease contract of  
the type described in Section 2A-523(1) or 2A-523(3)(a)  
or, if agreed, after other default by the lessee, the *a*  
lessor may: *62*

(a) identify to the lease contract conforming  
goods not already identified if at the time the lessor  
learned of the default they were in the lessor's or the  
supplier's possession or control; and

(b) dispose of goods (Section 2A-527(1)) that  
demonstrably have been intended for the particular lease  
contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise  
of reasonable commercial judgment for the purposes of  
avoiding loss and of effective realization, an aggrieved  
lessor or the supplier may either complete manufacture  
and wholly identify the goods to the lease contract or  
cease manufacture and lease, sell, or otherwise dispose  
of the goods for scrap or salvage value or proceed in  
any other reasonable manner.

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SB1

## OFFICIAL COMMENT

Uniform Statutory Source: Section 2-704.

Changes: Revised to reflect leasing practices and terminology.

Definitional Cross References:

"Aggrieved party". Section 1-201(2).  
"Conforming". Section 2A-103(1)(d).  
"Goods". Section 2A-103(1)(h).  
"Learn". Section 1-201(25).  
"Lease". Section 2A-103(1)(j).  
"Lease contract". Section 2A-103(1)(l).  
"Lessor". Section 2A-103(1)(p).  
"Rights". Section 1-201(36).  
"Supplier". Section 2A-103(1)(x).  
"Value". Section 1-201(44).

## AMENDMENT 2

Section 2A-529 of the Article is amended to read:

§ 2A-529. LESSOR'S ACTION FOR THE RENT. 383

(1) After default by the lessee under the lease contract of the type described in (Section 2A-523(1)) or 2A-523(3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2), the lessor may recover from the lessee as damages:

(a) for goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (Section 2A-219), (i) accrued and unpaid rent as of the date of default entry of judgment in favor of the lessor, (ii) the present value as of the same date of

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3-14-91  
SB 1

~~default~~ of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under Section 2A-530, less expenses saved in consequence of the lessee's default; and

(b) for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of ~~default~~ entry of judgment in favor of the lessor, (ii) the present value as of the same date of ~~default~~ of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under Section 2A-530, less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3), the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages ~~will be~~ is governed by Section 2A-527

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81. or Section 2A-528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to Section 2A-527 or 2A-528. 82

(4) Payment of the judgment for damages obtained pursuant to subsection (1) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) After a default by the lessee has wrongfully rejected or revoked acceptance of goods, has failed to pay rent then due, or has repudiated (Section 2A-402) under the lease contract of the type described in Section 2A-523(1) or Section 2A-523(3)(a) or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for non-acceptance under Sections 2A-527 and Section 2A-527 or Section 2A-528.

#### OFFICIAL COMMENT

Uniform Statutory Source: Section 2-709.

Changes: Substantially revised.

Purposes: ~~Subsection (1) provides another method of determining the measure of lessor's damages after default by the lessee. Absent agreement to the contrary (Section 2A-504), this Article provides the lessor, in this section and the two preceding sections, three alternate methods of computing damages recoverable from the defaulting lessee (Section 2A-523(1)(c)). This section, as well as the two preceding sections, applies~~

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. SB 321  
 DATE 3-14-91 SPONSOR(S) Sen. Fritz

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Ed Hall	MBCC	SB 321		✓
Cheryl Bryant	Crime Victims Unit	SB 321		✓
Pat Bralley	1st Magistrate Court	321	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

# HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. SB #379  
 DATE 3-4-91 SPONSOR(S) Sen. Van Valkenberg

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Gene Kisten	M.B.C.C.	379		✓
Mary D. Jay Fed of	Rob + Parale	379		✓
John E "Bobo" Kelly	P + P	379		✓
Debbie Willis	P/P	379		✓
Burt Webb	PAP	379		✓
Rep. Dave Brown	HD #72	379		✓
Terry Munaw	MFSE	379		✓

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## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. 36#388  
 DATE 3-14-91 SPONSOR(S) Sen Van Vleet

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Mike McCarty	Prob & Poole	388		✓
RALPH FISHER	P & P	388		✓
John E "Bobo" Kelly	P + P	388		✓
Debbie Willis	P/P	388		✓
Bud Webb	PIP	388		✓
Rep. Dave Brown	HO #22	388		✓
Terry Minami	MESE	388		✓

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# HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. SB #432  
 DATE 3-14-91 SPONSOR(S) Sen. Robinson

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
<u>Ann Kelly</u>	<u>DFS</u>	<u>432</u>		<u>X</u>

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