

SENATE BILL NO. 338

INTRODUCED BY PETERSON

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

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| February 2, 1979 | Introduced and referred to Committee on Local Government. |
| February 8, 1979 | Committee recommend bill do pass. Report adopted. |
| February 9, 1979 | Printed and placed on members' desks. |
| February 10, 1979 | Second reading, do pass. |
| February 12, 1979 | Considered correctly engrossed. |
| February 13, 1979 | Third reading, passed. Transmitted to second house. |

IN THE HOUSE

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| February 14, 1979 | Introduced and referred to Committee on Local Government. |
| March 6, 1979 | Committee recommend bill be concurred in. Report adopted. |
| March 8, 1979 | Second reading, concurred in. |
| March 10, 1979 | Third reading, concurred in. |

IN THE SENATE

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| March 12, 1979 | Returned from second house. Concurred in. Sent to enrolling. Reported correctly enrolled. |
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1 *Smith* BILL NO. *338*
 2 INTRODUCED BY *Robinson*
 3 BY REQUEST OF THE CODE COMMISSIONER

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 6 CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO GENERAL
 7 EMERGENCY AND PROTECTIVE SERVICES, TO LAW ENFORCEMENT, TO
 8 FIRE PROTECTION, AND TO CEMETERY SERVICES; REPEALING
 9 SECTIONS 11-1935 AND 11-2009, R.C.M. 1947."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 7-31-110, MCA, is amended to read:

13 "7-31-110. Effect of election. (1) ~~If it appears from~~
 14 ~~the result of such election that~~ a majority of the votes
 15 cast were for the contract and bonds, then ~~said the~~ contract
 16 shall be ~~is~~ in full force and effect and the bonds shall be
 17 issued and disposed of in the manner provided in this part.

18 (2) ~~If it shall appear from the result of such~~
 19 ~~election that~~ there was a tie ~~vote~~ or a majority of ~~said the~~
 20 votes were cast against the contract and bonds, then the
 21 contract and ~~surety~~ bond given for its fulfillment shall ~~be~~
 22 ~~not~~ and ~~are~~ void ~~and of no effect~~ and ~~said the~~ bonds and
 23 ~~none thereof~~ shall ~~not~~ be issued."

24 Section 2. Section 7-32-2103, MCA, is amended to read:

25 "7-32-2103. Limitation on number of deputy sheriffs.

1 The whole number of deputies allowed the sheriff is one
 2 undersheriff and, in addition, not to exceed the following
 3 number of deputies:

- 4 (1) six in counties of the first, second, and ~~or~~ third
 5 ~~classes~~ class;
- 6 (2) two in counties of the fourth class;
- 7 (3) one in counties of the fifth, sixth, ~~or~~ seventh
 8 ~~and eighth classes~~ class."

9 Section 3. Section 7-32-2121, MCA, is amended to read:
 10 "7-32-2121. Duties of sheriff. The sheriff must:

- 11 (1) preserve the peace;
- 12 (2) arrest and take before the nearest magistrate for
 13 examination all persons who attempt to commit or have
 14 committed a public offense;
- 15 (3) prevent and suppress all affrays, breaches of the
 16 peace, riots, and insurrections which may come to his
 17 knowledge;
- 18 (4) perform ~~the~~ duties of a humane officer within the
 19 county with reference to the protection of dumb animals;
- 20 (5) attend all courts, except justices ~~municipal~~
 21 ~~justices~~ and city courts, at their respective terms or
 22 sessions held within the county and obey their lawful orders
 23 and directions;
- 24 (6) command the aid of as many inhabitants of ~~his~~ ~~the~~
 25 county as ~~may be~~ ~~are~~ necessary in the execution of ~~these~~ ~~the~~

1 sheriff's duties:

2 (7) take charge of and keep the county jail and the
3 prisoners therein;

4 (8) endorse upon all notices and process the year,
5 month, day, hour, and minute of reception and issue therefor
6 to the person delivering them, on payment of fees, a
7 certificate showing the names of the parties, ~~the~~ title of
8 ~~the~~ paper, and ~~the~~ time of reception;

9 (9) serve all process or notices in the manner
10 prescribed by law;

11 (10) certify in writing upon the process or notices the
12 manner and time of service or, if he fails to make service,
13 the reasons of this failure, and return the ~~same papers~~
14 without delay; and

15 (11) perform such other duties as are required of him
16 by law."

17 Section 4. Section 7-32-2123, MCA, is amended to read:

18 "7-32-2123. Appointment of deputy sheriff to act as
19 jailer. The sheriff may appoint two deputies in counties of
20 the first, second, and ~~or~~ third ~~classes~~ class and one deputy
21 in counties of the fourth, fifth, sixth, ~~or~~ seventh--and
22 ~~eighth-classes~~ class who shall act as jailer and receive the
23 same salary as other deputy sheriffs."

24 Section 5. Section 7-32-2132, MCA, is amended to read:

25 "7-32-2132. Liability for escape in civil actions. (1)

1 A sheriff who ~~suffers~~ fails to prevent the escape or rescue
2 of a person arrested in a civil action without the consent
3 or connivance of the party in whose behalf the arrest or
4 imprisonment was made is liable as follows:

5 (a) When the arrest is upon an order to hold ~~to~~ for
6 bail or upon a surrender in exoneration of bail before
7 judgment, ~~he~~ the sheriff is liable to the plaintiff as ~~for~~
8 ~~the~~ bail.

9 (b) When the arrest is on an execution or commitment
10 to enforce the payment of money, ~~he~~ the sheriff is liable
11 for the amount expressed in the execution or commitment.

12 (c) When the arrest is on an execution or commitment
13 other than to enforce the payment of money, ~~he~~ the sheriff
14 is liable for the actual damages sustained.

15 (2) Upon being sued for damages for an escape or
16 rescue, ~~he~~ the sheriff may introduce evidence in mitigation
17 or exculpation.

18 (3) An action ~~cannot~~ may not be maintained against a
19 sheriff for a rescue or for an escape of a person arrested
20 upon an execution or commitment if, after his rescue or
21 escape and before the commencement of the action, the
22 prisoner returns to the jail or is retaken by the sheriff."

23 Section 6. Section 7-32-2143, MCA, is amended to read:

24 "7-32-2143. Mileage and expenses of sheriff in
25 general. (1) Except as provided in 7-32-2144 and 7-32-2145,

1 in addition to the fees specified in 7-32-2141 and
 2 7-32-2142, the sheriff shall receive for each mile actually
 3 traveled in serving any writ, process, order, or other
 4 paper, including a warrant of arrest, or in conveying a
 5 person under arrest before a magistrate or to jail only his
 6 actual expenses when such travel is made by railroad or
 7 airline; and when travel is other than by railroad or
 8 airline, he shall receive a mileage allowance as provided in
 9 2-18-503 for each mile actually traveled by him both going
 10 and returning and the actual expenses incurred by him in
 11 conveying a person under arrest before a magistrate or to
 12 jail. He shall receive the same mileage and his actual
 13 expenses for the person conveyed or transported under order
 14 of court within the county, the same to be in full payment
 15 for transporting and ~~dieting~~ feeding such persons during
 16 such transportation. Where ~~whenever~~ more than one person is
 17 transported by the sheriff or when one or more papers are
 18 served on the same trip made for the transportation of one
 19 or more prisoners, but only one mileage shall ~~may~~ be
 20 charged.

21 (2) No mileage shall ~~may~~ be paid by the county to
 22 sheriffs whose vehicles are provided and maintained by the
 23 county. All mileage paid to sheriffs whose vehicles are
 24 provided and maintained by the county shall be paid over to
 25 the county treasurer and deposited in the county general

1 fund.

2 (3) (a) No mileage ~~must~~ may be allowed on an
 3 attachment, order of arrest, order for delivery of personal
 4 property, or any other order, notice, or paper when the same
 5 accompanies the summons and the service thereof may be made
 6 at the time of the service of the summons, ~~unless~~ except for
 7 the distance actually traveled beyond that required to serve
 8 the summons. When two or more papers are served on the same
 9 person at the same time or when any paper or papers are
 10 served on more than one person on the same trip, but only
 11 one mileage ~~must~~ may be allowed or charged; and in the
 12 service of subpoenas, but only one mileage ~~must~~ may be
 13 charged when the persons named therein live in the same
 14 place or in the same direction; but mileage ~~must~~ may be
 15 charged for the longest distance actually traveled. Any
 16 writ, order, or other paper for service must be received at
 17 any place in the county where a sheriff or a deputy is
 18 found, and mileage must be computed only from such place to
 19 the place of service. When two or more officers travel in
 20 the same automobile in the discharge of any duty, but only
 21 one mileage shall ~~may~~ be allowed.

22 (b) When any sheriff or constable serves more than one
 23 process in the same cause, not requiring more than one
 24 journey from his office, he shall receive mileage only for
 25 the more distant service, and no mileage in any case ~~must~~

1 may be allowed for less than 1 mile actually traveled.*

2 Section 7. Section 7-32-2144, MCA, is amended to read:

3 "7-32-2144. Mileage and expenses of sheriff for

4 delivery of prisoners and mentally ill persons. (1) Sheriffs

5 ~~A sheriff~~ delivering prisoners at the state prison or reform

6 ~~school a juvenile correctional facility~~ or mentally ill

7 persons at the ~~Harm Springs~~ state hospital ~~shall receive or~~

8 ~~other mental health facility receives~~ actual expenses

9 necessarily incurred in their transportation. The expenses

10 shall include the expenses of the sheriff in going to and

11 returning from such ~~the~~ institution. ~~They~~ The sheriff shall

12 take vouchers for every item of ~~expenses incurred by them in~~

13 ~~such transportation expense~~. The amount of these expenses,

14 as shown by the vouchers when ~~served~~ presented by ~~said the~~

15 sheriff, shall be audited and allowed by the department of

16 administration or by the board of county commissioners, as

17 the case may be, and paid out of the same money and in the

18 same manner as are other expense claims against the state or

19 counties. In determining the actual expense if travel is by

20 a privately owned vehicle, the mileage rate shall be allowed

21 as provided in subsection (2). No other or further

22 compensation shall may be received by sheriffs for such

23 expenses.

24 (2) ~~While~~ Unless otherwise provided, while in the

25 discharge of his duties, both civil and criminal, the

1 sheriff ~~shall receive~~ receives a mileage allowance as

2 provided in 2-18-503. The sheriff shall also be reimbursed

3 for actual and necessarily incurred expenses for

4 transporting, lodging, and ~~meals of feeding~~ persons ordered

5 by the court as provided in 2-18-501 through 2-18-503. The

6 county ~~shall is~~ not be liable for and the board of county

7 commissioners ~~shall may~~ not pay for any claim of the sheriff

8 or other officer for any other expenses incurred in travel

9 or for subsistence in cases where mileage is allowed under

10 this section, the fees for mileage named in this section

11 being in full for all such traveling expenses in both civil

12 and criminal work.*

13 Section 8. Section 7-32-4112, MCA, is amended to read:

14 "7-32-4112. Qualifications of policemen. (1) ~~the~~ ~~The~~

15 ~~members of a police department of any city at the time of~~

16 ~~their appointment under this part shall not be less than 20~~

17 ~~years of age or more than 40 years of age.~~

18 ~~(b) The~~ members of the police department on the active

19 list of any city at the time of their appointment under this

20 part shall may not be less than 18 years of age or more than

21 35 years of age, but this restriction shall does not apply

22 to any member of any present police department as of July 2,

23 1973, ~~to police reserves provided for in this part or to~~

24 honorably discharged persons who served in the armed forces

25 of the United States in time of war, providing such title of

1 service be ~~is~~ not less than 3 months, ~~or to applicants for~~
2 ~~reinstatement under 7-32-4110.~~

3 (2) A police officer must be a citizen of the United
4 States and meet the minimum qualifying standards for
5 employment promulgated by the board of crime control."

6 Section 9. Section 7-32-4116, MCA, is amended to read:

7 "7-32-4116. Minimum wage of police in first- and
8 second-class cities. (1) Each duly confirmed member of a
9 police department of cities of the first and second class of
10 Montana is entitled to a minimum wage for a daily service of
11 8 hours' work of at least \$750 per month for the first year
12 of service and thereafter at least \$750 a month plus 1% of
13 the minimum base monthly salary of \$750 for each additional
14 year of service up to and including the 20th year of
15 additional service.

16 (2) This section ~~shall~~ ~~apply~~ ~~applies~~ to ~~and~~ ~~include~~
17 ~~all~~ cities and towns not of the first class which have
18 heretofore elected ~~or may hereafter elect~~ to come under the
19 provisions of ~~[11-1017 to 11-1030 inclusive]~~ Chapter 120,
20 ~~Laws of 1929, as amended, or Chapter 335, Laws of 1974, as~~
21 ~~amended."~~

22 Section 10. Section 7-32-4303, MCA, is amended to
23 read:

24 "7-32-4303. Control of shoplifting. The city or town
25 council ~~has power to may~~ define shoplifting as ~~theft~~ ~~in~~

1 ~~conformance with law provided in 46-6-501~~ and to punish
2 persons found guilty thereof."

3 Section 11. Section 7-33-2312, MCA, is amended to
4 read:

5 "7-33-2312. Organization of fire company. (1) Every
6 such fire company ~~organized pursuant to 7-33-2312~~ must
7 choose or elect a foreman, who is the presiding officer, a
8 secretary, and a treasurer and may establish and adopt
9 bylaws and regulations and impose penalties, not exceeding
10 \$5 or expulsion for each offense.

11 (2) Every regularly organized fire department may
12 adopt a department seal, ~~stating~~ the name of the particular
13 fire department to which it belongs, ~~which must be~~ ~~The seal~~
14 ~~is~~ under the control of and for the use of the secretary and
15 ~~shall~~ be affixed by him to ~~exempt~~ certificates, certificates
16 of active membership, and such other documents as the bylaws
17 may provide. The secretary of every department having a seal
18 must take the constitutional oath of office and give such
19 bond as the bylaws provide for the faithful performance of
20 his duties."

21 Section 12. Section 7-33-4102, MCA, is amended to
22 read:

23 "7-33-4102. Applicability of part. (1) The provisions
24 of this part ~~shall in all respects be applicable to and~~
25 ~~shall~~ govern and control fire departments in every such city

1 or town organized under whatever form of municipal
2 government except where this part is in conflict with the
3 commission form of government provided for in part 42 of
4 chapter 3.

5 (2) Where ~~Whenever~~ the provisions of this part do
6 conflict with the provisions of ~~chapter 3,~~ part 42,
7 pertaining to the commission form of government, the
8 provisions pertaining to the commission form of government
9 shall prevail.

10 ~~(3) This part shall apply to organized fire~~
11 ~~departments in every city and town of the state of Montana~~
12 ~~regardless of the form of government under which said city~~
13 ~~or town may be operating or may at any time adopt."~~

14 Section 13. Section 7-35-2122, MCA, is amended to
15 read:

16 "7-35-2122. County tax levy. The board of county
17 commissioners must, annually at the time of levying county
18 taxes, fix and levy upon all property within said ~~the~~
19 cemetery district, an amount sufficient to raise the amount
20 certified by the board of cemetery trustees to be raised by
21 a tax on the property of said ~~the~~ district. The tax so
22 levied shall may not exceed 4 mills on each dollar of
23 taxable valuation on the property of said ~~the~~ district."

24 Section 14. Section 7-35-4104, MCA, is amended to
25 read:

1 "7-35-4104. Cemeteries on public lands. Incorporated
2 cities or towns and, for unincorporated towns or villages,
3 the board of county commissioners of the county may survey,
4 lay out, and dedicate a portion of the public lands situated
5 in or near such ~~the~~ city, town, or village, not exceeding 5
6 acres, for cemetery and burial purposes. The survey and
7 description thereof, together with a certified copy of the
8 order ~~made~~ constituting the same land as a cemetery, must be
9 recorded in the office of the county clerk of the county in
10 which the same land is located."

11 Section 15. Repealer. Sections 11-1935 and 11-2009,
12 R.C.M. 1947, are repealed.

-End-

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CHAIRMANFRANK HAZELBAKER
VICE CHAIRMAN

CHET BLAYLOCK

PAT M. GOODOVER

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DIRECTOR, ACCOUNTING DIVISION

LC0624

1979 Legislature
Code Commissioner Bill - Summary*Senate* Bill No. 538

AN ACT TO GENERALLY REVISE AND CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO GENERAL EMERGENCY AND PROTECTIVE SERVICES, TO LAW ENFORCEMENT, TO FIRE PROTECTION, AND TO CEMETERY SERVICES; REPEALING SECTIONS 11-1935 AND 11-2009, R.C.M. 1947.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 7-31-110. This section is rewritten for clarity. In subsection (2), "surety" is added to avoid confusion with the reference to financing bonds in the section.

Section 2. 7-32-2103. In subsection (3), a reference to an eighth class county is deleted. There are no such counties. The highest class of county is seven.

Section 3. 7-32-2121. The section is rewritten for clarity. In subsection (5), municipal courts are added to the list of courts which the sheriff is not required to attend. The municipal court law (Title 3, chapter 6) does not require the sheriff's attendance.

Section 4. 7-32-2123. A reference to eighth class counties is deleted. See section 2.

Section 5. 7-32-2132. This section is rewritten for clarity and to utilize more modern usage.

Section 6. 7-32-2143. This section is rewritten for clarity. In subsection (3)(a), "unless" is changed to "except" for proper grammatical usage.

Section 7. 7-32-2144. This section is rewritten for clarity. In subsection (1), a reference to "reform school"

is changed to a "juvenile correctional facility" to use the present terminology; "state hospital" is changed to "Warm Springs state hospital" to use the correct terminology; and "other mental health facilities" is added for consistency with 53-21-132. In subsection (2), the introductory phrase "Unless otherwise provided for" is added to remove conflicts with other language (such as in subsection (1) for example).

Section 8. 7-32-4112. Subsection (1)(a) is deleted as inconsistent with the more recent language found in subsection (1)(b). Subsection (1)(b) is rewritten for clarity and to delete the reference to police reserves which is meaningless following the 1977 laws on reserve and auxilliary officers (Chapter 85, Laws 1977). Because of the deletion of police reserves, the reference to 7-32-4110 is added as it appears individuals applying for reinstatement were not intended to be subject to the age restrictions.

Section 9. 7-32-4116. In subsection (2), the internal reference at the end of the sentence is changed to session law references. There is no precise M.C.A. reference which corresponds to the R.C.M. reference (most of which has been repealed).

Section 10. 7-32-4303. The section is rewritten to provide a reference to 46-6-501. Section 46-6-501 contains a definition of shoplifting and both 7-32-4303 and 46-6-501 were enacted by Chapter 274, Laws of 1974.

Section 11. 7-33-2312. This section is rewritten for clarity.

Section 12. 7-33-4102. The section is rewritten for clarity. In subsection (2), "part 42" is changed to "chapter 3, part 42" to correct an inaccurate reference created during recodification. Subsection (3) is deleted as redundant.

Section 13. 7-35-2122. The section is rewritten for clarity, and in the first sentence the words "an amount" are added for grammatical purposes.

Section 14. 7-35-4104. This section is rewritten for clarity, and in the first sentence the words "a portion" are added for grammatical purposes.

Section 15. Repealer. Section 11-1935, R.C.M. 1947, is recommended for repeal. This section is superseded by 7-33-4128 for confirmed firefighters and by the minimum wage laws for probationary firefighters. Section 11-2009, R.C.M. 1947, is recommended for repeal. This section was held unconstitutional by the Montana Supreme Court in Great Northern Railway Co. v. Roosevelt County, 332 P2d 501.

Approved by Comm.
on Local Government

BILL NO. 338

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(2) If ~~it--shall--appear--from--the--result--of--such election--that~~ there was a tie vote or a majority of ~~said the~~ votes were cast, against the contract and bonds, then the contract and surety bond given for its fulfillment shall ~~be~~ not and are void and of no effect and ~~said the~~ bonds and none thereof shall not be issued."

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- (5) attend all courts, except justices municipal justices, and city courts, at their respective terms or sessions held within the county and obey their lawful orders and directions;
- (6) command the aid of as many inhabitants of ~~his~~ the county as ~~may be~~ are necessary in the execution of these ~~the~~

1 sheriff's duties;

2 (7) take charge of and keep the county jail and the
3 prisoners therein;

4 (8) endorse upon all notices and process the year,
5 month, day, hour, and minute of reception and issue therefor
6 to the person delivering them, on payment of fees, a
7 certificate showing the names of the parties, ~~the~~ title of
8 ~~the~~ papers, and ~~the~~ time of reception;

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12 manner and time of service or, if he fails to make service,
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23 same salary as other deputy sheriffs."

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4 imprisonment was made is liable as follows:

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8 ~~the~~ bail.

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 9 person at the same time or when any paper or papers are
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9 recorded in the office of the county clerk of the county in
10 which the same land is located."

11 Section 15. Repealer. Sections 11-1935 and 11-2009,
12 R.C.M. 1947, are repealed.

-End-

1 *Senate* BILL NO. *338*
 2 INTRODUCED BY *Robert*
 3 BY REQUEST OF THE CODE COMMISSIONER

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 6 CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO GENERAL
 7 EMERGENCY AND PROTECTIVE SERVICES, TO LAW ENFORCEMENT, TO
 8 FIRE PROTECTION, AND TO CEMETERY SERVICES; REPEALING
 9 SECTIONS 11-1935 AND 11-2009, R.C.M. 1947."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 7-31-110, MCA, is amended to read:

13 "7-31-110. Effect of election. (1) ~~If it appears from~~
 14 ~~the result of such election that~~ a majority of the votes
 15 cast were for the contract and bonds, then ~~said the~~ contract
 16 shall be is in full force and effect and the bonds shall be
 17 issued and disposed of in the manner provided in this part.

18 (2) ~~If it shall appear from the result of such~~
 19 ~~election that~~ there was a tie vote or a majority of ~~said the~~
 20 votes were cast against the contract and bonds, then the
 21 contract and surety bond given for its fulfillment shall ~~be~~
 22 ~~null and are~~ void ~~and of no effect~~ and ~~said the~~ bonds and
 23 ~~none thereof~~ shall not be issued."

24 Section 2. Section 7-32-2103, MCA, is amended to read:

25 "7-32-2103. Limitation on number of deputy sheriffs.

1 The whole number of deputies allowed the sheriff is one
 2 undersheriff and, in addition, not to exceed the following
 3 number of deputies:

4 (1) six in counties of the first, second, and or third
 5 ~~classes~~ class;

6 (2) two in counties of the fourth class;

7 (3) one in counties of the fifth, sixth, or seventh
 8 ~~and eighth classes~~ class."

9 Section 3. Section 7-32-2121, MCA, is amended to read:

10 "7-32-2121. Duties of sheriff. The sheriff must:

11 (1) preserve the peace;

12 (2) arrest and take before the nearest magistrate for
 13 examination all persons who attempt to commit or have
 14 committed a public offense;

15 (3) prevent and suppress all affrays, breaches of the
 16 peace, riots, and insurrections which may come to his
 17 knowledge;

18 (4) perform ~~the~~ duties of a humane officer within the
 19 county with reference to the protection of dumb animals;

20 (5) attend all courts, except justices municipals
 21 justices, and city courts, at their respective terms or
 22 sessions held within the county and obey their lawful orders
 23 and directions;

24 (6) command the aid of as many inhabitants of ~~his the~~
 25 county as ~~may be~~ are necessary in the execution of ~~these the~~

1 sheriff's duties:

2 (7) take charge of and keep the county jail and the
3 prisoners therein;

4 (8) endorse upon all notices and process the year,
5 month, day, hour, and minute of reception and issue therefor
6 to the person delivering them, on payment of fees, a
7 certificate showing the names of the parties, ~~the~~ title of
8 ~~the~~ paper, and ~~the~~ time of reception;

9 (9) serve all process or notices in the manner
10 prescribed by law;

11 (10) certify in writing upon the process or notices the
12 manner and time of service or, if he fails to make service,
13 the reasons of this failure, and return the ~~same~~ papers
14 without delay; and

15 (11) perform such other duties as are required of ~~him~~
16 by law."

17 Section 4. Section 7-32-2123, MCA, is amended to read:

18 "7-32-2123. Appointment of deputy sheriff to act as
19 jailer. The sheriff may appoint two deputies in counties of
20 the first, second, ~~and~~ ~~or~~ third ~~classes~~ class and one deputy
21 in ~~counties of~~ the fourth, fifth, sixth, ~~or~~ seventh--and
22 eighth-~~classes~~ class who shall act as jailer and receive the
23 same salary as other deputy sheriffs."

24 Section 5. Section 7-32-2132, MCA, is amended to read:

25 "7-32-2132. Liability for escape in civil actions. (1)

1 A sheriff who ~~suffers~~ fails to prevent the escape or rescue
2 of a person arrested in a civil action without the consent
3 or connivance of the party in whose behalf the arrest or
4 imprisonment was made is liable as follows:

5 (a) When the arrest is upon an order to hold to for
6 bail or upon a surrender in exoneration of bail before
7 judgment, he ~~the~~ sheriff is liable to the plaintiff es for
8 ~~the~~ bail.

9 (b) When the arrest is on an execution or commitment
10 to enforce the payment of money, he ~~the~~ sheriff is liable
11 for the amount expressed in the execution or commitment.

12 (c) When the arrest is on an execution or commitment
13 other than to enforce the payment of money, he ~~the~~ sheriff
14 is liable for the actual damages sustained.

15 (2) Upon being sued for damages for an escape or
16 rescue, he ~~the~~ sheriff may introduce evidence in mitigation
17 or exculpation.

18 (3) An action ~~cannot~~ may not be maintained against
19 sheriff for a rescue or for an escape of a person arrested
20 upon an execution or commitment if, after his rescue or
21 escape and before the commencement of the action, the
22 prisoner returns to the jail or is retaken by the sheriff."

23 Section 6. Section 7-32-2143, MCA, is amended to read:

24 "7-32-2143. Mileage and expenses of sheriff in
25 general. (1) Except as provided in 7-32-2144 and 7-32-2145,

1 in addition to the fees specified in 7-32-2141 and
 2 7-32-2142, the sheriff shall receive for each mile actually
 3 traveled in serving any writ, process, order, or other
 4 paper, including a warrant of arrest, or in conveying a
 5 person under arrest before a magistrate or to jail only his
 6 actual expenses when such travel is made by railroad or
 7 airline; and when travel is other than by railroad or
 8 airline, he shall receive a mileage allowance as provided in
 9 2-18-503 for each mile actually traveled by him both going
 10 and returning and the actual expenses incurred by him in
 11 conveying a person under arrest before a magistrate or to
 12 jail. He shall receive the same mileage and his actual
 13 expenses for the person conveyed or transported under order
 14 of court within the county, the same to be in full payment
 15 for transporting and ~~dieting~~ feeding such persons during
 16 such transportation. ~~Where~~ Whenever more than one person is
 17 transported by the sheriff or when one or more papers are
 18 served on the same trip made for the transportation of one
 19 or more prisoners, ~~but~~ only one mileage ~~shall~~ may be
 20 charged.

21 (2) No mileage ~~shall~~ may be paid by the county to
 22 sheriffs whose vehicles are provided and maintained by the
 23 county. All mileage paid to sheriffs whose vehicles are
 24 provided and maintained by the county shall be paid over to
 25 the county treasurer and deposited in the county general

1 fund.

2 (3) (a) No mileage ~~must~~ may be allowed on an
 3 attachment, order of arrest, order for delivery of personal
 4 property, or any other order, notice, or paper when the same
 5 accompanies the summons and the service thereof may be made
 6 at the time of the service of the summons, ~~unless~~ except for
 7 the distance actually traveled beyond that required to serve
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 9 person at the same time or when any paper or papers are
 10 served on more than one person on the same trip, ~~but~~ only
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 13 charged when the persons named therein live in the same
 14 place or in the same direction; but mileage ~~must~~ may be
 15 charged for the longest distance actually traveled. Any
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 17 any place in the county where a sheriff or a deputy is
 18 found, and mileage must be computed only from such place to
 19 the place of service. When two or more officers travel in
 20 the same automobile in the discharge of any duty, ~~but~~ only
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 23 process in the same cause, not requiring more than one
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3 BY REQUEST OF THE CODE COMMISSIONER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
6 CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO GENERAL
7 EMERGENCY AND PROTECTIVE SERVICES, TO LAW ENFORCEMENT, TO
8 FIRE PROTECTION, AND TO CEMETERY SERVICES; REPEALING
9 SECTIONS 11-1935 AND 11-2009, R.C.M. 1947."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 7-31-110, MCA, is amended to read:

13 "~~7-31-110. Effect of election. (1) If it appears--from~~
14 ~~the--result--of--such--election--that~~ a majority of the votes
15 cast were for the contract and bonds, then ~~said the~~ contract
16 ~~shall be is~~ in full force and effect and the bonds shall be
17 issued and disposed of in the manner provided in this part.

18 (2) If ~~it--shall--appear--from--the--result--of--such~~
19 ~~election--that~~ there was a tie vote or a majority of ~~said the~~
20 votes were cast against the contract and bonds, then the
21 contract and surety bond given for its fulfillment ~~shall--be~~
22 ~~null--and are~~ void and of no effect and ~~said the~~ bonds and
23 none thereof shall not be issued."

24 Section 2. Section 7-32-2103, MCA, is amended to read:

25 "7-32-2103. Limitation on number of deputy sheriffs.

1 The whole number of deputies allowed the sheriff is one
2 undersheriff and, in addition, not to exceed the following
3 number of deputies:

- 4 (1) six in counties of the first, second, and or third
5 ~~classes class~~;
6 (2) two in counties of the fourth class;
7 (3) one in counties of the fifth, sixth, or seventh
8 ~~and-eighth-classes class."~~

9 Section 3. Section 7-32-2121, MCA, is amended to read:

10 "7-32-2121. Duties of sheriff. The sheriff must:

- 11 (1) preserve the peace;
12 (2) arrest and take before the nearest magistrate for
13 examination all persons who attempt to commit or have
14 committed a public offense;
15 (3) prevent and suppress all affrays, breaches of the
16 peace, riots, and insurrections which may come to his
17 knowledge;
18 (4) perform ~~the~~ duties of a humane officer within the
19 county with reference to the protection of dumb animals;
20 (5) attend all courts, except justices municipal
21 justices, and city courts, at their respective terms or
22 sessions held within the county and obey their lawful orders
23 and directions;
24 (6) command the aid of as many inhabitants of his ~~the~~
25 county as may be are necessary in the execution of these ~~the~~

1 sheriff's duties:

2 (7) take charge of and keep the county jail and the
3 prisoners therein;

4 (8) endorse upon all notices and process the year,
5 month, day, hour, and minute of reception and issue therefor
6 to the person delivering them, on payment of fees, a
7 certificate showing the names of the parties, ~~the~~ title of
8 ~~the~~ paper, and ~~the~~ time of reception;

9 (9) serve all process or notices in the manner
10 prescribed by law;

11 (10) certify in writing upon the process or notices the
12 manner and time of service or, if he fails to make service,
13 the reasons of this failure, and return the ~~same~~ papers
14 without delay; and

15 (11) perform such other duties as are required of him
16 by law."

17 Section 4. Section 7-32-2123, MCA, is amended to read:

18 "7-32-2123. Appointment of deputy sheriff to act as
19 jailer. The sheriff may appoint two deputies in counties of
20 the first, second, and ~~or~~ third classes ~~class~~ and one deputy
21 in counties of the fourth, fifth, sixth, ~~or~~ seventh--and
22 ~~eighth--classes class~~ who shall act as jailer and receive the
23 same salary as other deputy sheriffs."

24 Section 5. Section 7-32-2132, MCA, is amended to read:

25 "7-32-2132. Liability for escape in civil actions. (1)

1 A sheriff who suffers fails to prevent the escape or rescue
2 of a person arrested in a civil action without the consent
3 or connivance of the party in whose behalf the arrest or
4 imprisonment was made is liable as follows:

5 (a) When the arrest is upon an order to hold to ~~for~~
6 bail or upon a surrender in exoneration of bail before
7 judgment, he ~~the~~ sheriff is liable to the plaintiff as ~~for~~
8 ~~the~~ bail.

9 (b) When the arrest is on an execution or commitment
10 to enforce the payment of money, he ~~the~~ sheriff is liable
11 for the amount expressed in the execution or commitment.

12 (c) When the arrest is on an execution or commitment
13 other than to enforce the payment of money, he ~~the~~ sheriff
14 is liable for the actual damages sustained.

15 (2) Upon being sued for damages for an escape or
16 rescue, he ~~the~~ sheriff may introduce evidence in mitigation
17 or exculpation.

18 (3) An action cannot ~~may not~~ be maintained against a
19 sheriff for a rescue or for an escape of a person arrested
20 upon an execution or commitment if, after his rescue or
21 escape and before the commencement of the action, the
22 prisoner returns to the jail or is retaken by the sheriff."

23 Section 6. Section 7-32-2143, MCA, is amended to read:

24 "7-32-2143. Mileage and expenses of sheriff in
25 general. (1) Except as provided in 7-32-2144 and 7-32-2145,

1 in addition to the fees specified in 7-32-2141 and
 2 7-32-2142, the sheriff shall receive for each mile actually
 3 traveled in serving any writ, process, order, or other
 4 paper, including a warrant of arrest, or in conveying a
 5 person under arrest before a magistrate or to jail only his
 6 actual expenses when such travel is made by railroad or
 7 airline; and when travel is other than by railroad or
 8 airline, he shall receive a mileage allowance as provided in
 9 2-18-503 for each mile actually traveled by him both going
 10 and returning and the actual expenses incurred by him in
 11 conveying a person under arrest before a magistrate or to
 12 jail. He shall receive the same mileage and his actual
 13 expenses for the person conveyed or transported under order
 14 of court within the county, the same to be in full payment
 15 for transporting and ~~detaining~~ feeding such persons during
 16 such transportation. ~~Where~~ ~~Whenever~~ more than one person is
 17 transported by the sheriff or when one or more papers are
 18 served on the same trip made for the transportation of one
 19 or more prisoners, but only one mileage shall ~~may~~ be
 20 charged.

21 (2) No mileage shall ~~may~~ be paid by the county to
 22 sheriffs whose vehicles are provided and maintained by the
 23 county. All mileage paid to sheriffs whose vehicles are
 24 provided and maintained by the county shall be paid over to
 25 the county treasurer and deposited in the county general

1 fund.

2 (3) (a) No mileage ~~must~~ may be allowed on an
 3 attachment, order of arrest, order for delivery of personal
 4 property, or any other order, notice, or paper when the same
 5 accompanies the summons and the service thereof may be made
 6 at the time of the service of the summons, ~~unless~~ ~~except~~ for
 7 the distance actually traveled beyond that required to serve
 8 the summons. When two or more papers are served on the same
 9 person at the same time or when any paper or papers are
 10 served on more than one person on the same trip, but only
 11 one mileage ~~must~~ may be allowed or charged; and in the
 12 service of subpoenas, but only one mileage ~~must~~ may be
 13 charged when the persons named therein live in the same
 14 place or in the same direction; but mileage ~~must~~ may be
 15 charged for the longest distance actually traveled. Any
 16 writ, order, or other paper for service must be received at
 17 any place in the county where a sheriff or a deputy is
 18 found, and mileage must be computed only from such place to
 19 the place of service. When two or more officers travel in
 20 the same automobile in the discharge of any duty, but only
 21 one mileage shall ~~may~~ be allowed.

22 (b) When any sheriff or constable serves more than one
 23 process in the same cause, not requiring more than one
 24 journey from his office, he shall receive mileage only for
 25 the more distant service, and no mileage in any case ~~must~~

1 may be allowed for less than 1 mile actually traveled."

2 Section 7. Section 7-32-2144, MCA, is amended to read:

3 "7-32-2144. Mileage and expenses of sheriff for
4 delivery of prisoners and mentally ill persons. (1) Sheriffs
5 ~~A sheriff~~ delivering prisoners at the state prison or reform
6 ~~school~~ a juvenile correctional facility or mentally ill
7 persons at the Harc Springs state hospital ~~shall receive~~ or
8 other mental health facility receives actual expenses
9 necessarily incurred in their transportation. The expenses
10 ~~shall~~ include the expenses of the sheriff in going to and
11 returning from such ~~the~~ institution. ~~They~~ the sheriff shall
12 take vouchers for every item of expenses ~~incurred by them in~~
13 ~~such transportation expense~~. The amount of these expenses,
14 as shown by the vouchers when served presented by said ~~the~~
15 sheriff, shall be audited and allowed by the department of
16 administration or by the board of county commissioners, as
17 the case may be, and paid out of the same money and in the
18 same manner as are other expense claims against the state or
19 counties. In determining the actual expense if travel is by
20 a privately owned vehicle, the mileage rate shall be allowed
21 as provided in subsection (2). No other or further
22 compensation ~~shall~~ may be received by sheriffs for such
23 expenses.

24 (2) ~~Who~~ Unless otherwise provided, while in the
25 discharge of his duties, both civil and criminal, the

1 sheriff ~~shall receive~~ receives a mileage allowance as
2 provided in 2-18-503. The sheriff shall also be reimbursed
3 for actual and necessarily incurred expenses for
4 transporting, lodging, and ~~meals of feeding~~ persons ordered
5 by the court as provided in 2-18-501 through 2-18-503. The
6 county ~~shall~~ is not be liable for and the board of county
7 commissioners ~~shall~~ may not pay for any claim of the sheriff
8 or other officer for any other expenses incurred in travel
9 or for subsistence in cases where mileage is allowed under
10 this section, the fees for mileage named in this section
11 being in full for all such traveling expenses in both civil
12 and criminal work."

13 Section 8. Section 7-32-4112, MCA, is amended to read:

14 "7-32-4112. Qualifications of policemen. (1) ~~(a) The~~
15 ~~members of a police department of any city at the time of~~
16 ~~their appointment under this part shall not be less than 20~~
17 ~~years of age or more than 40 years of age.~~

18 ~~(b) The~~ members of the police department on the active
19 list of any city at the time of their appointment under this
20 part ~~shall~~ may not be less than 18 years of age or more than
21 35 years of age, but this restriction ~~shall~~ does not apply
22 to any member of any present police department as of July 2,
23 1973, ~~to police reserves provided for in this part or~~ to
24 honorably discharged persons who served in the armed forces
25 of the United States in time of war, providing such time of

1 service be ~~is~~ not less than 3 months, ~~or to applicants for~~
2 ~~reinstatement under 7-32-4110.~~

3 (2) A police officer must be a citizen of the United
4 States and meet the minimum qualifying standards for
5 employment promulgated by the board of crime control."

6 Section 9. Section 7-32-4116, MCA, is amended to read:

7 "7-32-4116. Minimum wage of police in first- and
8 second-class cities. (1) Each duly confirmed member of a
9 police department of cities of the first and second class of
10 Montana is entitled to a minimum wage for a daily service of
11 8 hours' work of at least \$750 per month for the first year
12 of service and thereafter at least \$750 a month plus 1% of
13 the minimum base monthly salary of \$750 for each additional
14 year of service up to and including the 20th year of
15 additional service.

16 (2) This section ~~shall~~ ~~apply~~ ~~applies~~ to ~~and~~ ~~include~~
17 ~~all~~ cities and towns not of the first class which have
18 heretofore elected ~~or may hereafter elect~~ to come under the
19 provisions of ~~[11-1017 to 11-1030--inclusive]~~ Chapter 120,
20 Laws of 1929, as amended, or Chapter 335, Laws of 1974, as
21 amended."

22 Section 10. Section 7-32-4303, MCA, is amended to
23 read:

24 "7-32-4303. Control of shoplifting. The city or town
25 council ~~has power to~~ ~~may~~ define shoplifting as ~~theft~~ ~~in~~

1 ~~conformance with law~~ ~~provided in 46-6-501~~ and to punish
2 persons found guilty thereof."

3 Section 11. Section 7-33-2312, MCA, is amended to
4 read:

5 "7-33-2312. Organization of fire company. (1) Every
6 such fire company ~~organized pursuant to 7-33-2312~~ must
7 choose or elect a foreman, who is the presiding officer, a
8 secretary, and a treasurer and may establish and adopt
9 bylaws and regulations and impose penalties, not exceeding
10 \$5 or expulsion for each offense.

11 (2) Every regularly organized fire department may
12 adopt a department seal, ~~stating~~ the name of the particular
13 fire department to which it belongs, ~~which must be~~ ~~the seal~~
14 ~~is~~ under the control of and for the use of the secretary and
15 ~~shall~~ be affixed by him to exempt certificates, certificates
16 of active membership, and such other documents as the bylaws
17 may provide. The secretary of every department having a seal
18 must take the constitutional oath of office and give such
19 bond as the bylaws provide for the faithful performance of
20 his duties."

21 Section 12. Section 7-33-4102, MCA, is amended to
22 read:

23 "7-33-4102. Applicability of part. (1) The provisions
24 of this part ~~shall in all respects be applicable to and~~
25 ~~shall~~ govern and control fire departments in every such city

1 or town organized under whatever form of municipal
2 government except where this part is in conflict with the
3 commission form of government provided for in part 42 of
4 chapter 3.

5 (2) ~~Where whenever~~ the provisions of this part do
6 conflict with the provisions of ~~chapter 3,~~ part 42,
7 pertaining to the commission form of government, the
8 provisions pertaining to the commission form of government
9 shall prevail.

10 ~~(3) This part shall apply to organized fire~~
11 ~~departments in every city and town of the state of Montana~~
12 ~~regardless of the form of government under which said city~~
13 ~~or town may be operating or may at any time adopt.~~"

14 Section 13. Section 7-35-2122, MCA, is amended to
15 read:

16 "7-35-2122. County tax levy. The board of county
17 commissioners must, annually at the time of levying county
18 taxes, fix and levy upon all property within ~~said~~ ~~the~~
19 cemetery districts ~~an amount~~ sufficient to raise the amount
20 certified by the board of cemetery trustees to be raised by
21 a tax on the property of ~~said~~ ~~the~~ district. The tax so
22 ~~levied shall~~ ~~may~~ not exceed 4 mills on each dollar of
23 taxable valuation on the property of ~~said~~ ~~the~~ district."

24 Section 14. Section 7-35-4104, MCA, is amended to
25 read:

1 "7-35-4104. Cemeteries on public lands. Incorporated
2 cities or towns and, for unincorporated towns or villages,
3 the board of county commissioners of the county may survey,
4 lay out, and dedicate a portion of the public lands situated
5 in or near ~~such~~ ~~the~~ city, town, or village, not exceeding 5
6 acres, for cemetery and burial purposes. The survey and
7 description thereof, together with a certified copy of the
8 order ~~made~~ constituting the ~~same~~ land as a cemetery, must be
9 recorded in the office of the county clerk of the county in
10 which the ~~same~~ land is located."

11 Section 15. Repealer. Sections 11-1935 and 11-2009,
12 R.C.M. 1947, are repealed.

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13 the minimum base monthly salary of \$750 for each additional
14 year of service up to and including the 20th year of
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