

SENATE BILL NO. 390

Introduced: 02/10/83

Referred to Committee on State Administration: 02/10/83

Hearing: 2/14/83

Report: 2/15/83, Do Pass

2nd Reading: 02/17/83

3rd Reading: 02/19/83

On Motion, 2/21/83, That The Bill Be Placed on 2nd  
Reading. Motion Passed.

2nd Reading: 02/22/83

3rd Reading: 02/23/83

Transmitted to House: 02/23/83

Referred to Committee on State Administration: 02/28/83

Hearing: 3/7/83

Report: 03/23/83, Be Not Concurred In

Bill Killed: 03/25/83

1 *Senate* BILL NO. *390*  
 2 INTRODUCED BY *Englem David Jackson*  
 3 *E. Smith Triest Connor Lynn Thott*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE MONTANA *Called*  
 5 STATE PRISON FROM CONTROL OF THE DEPARTMENT OF INSTITUTIONS *Brand*  
 6 AND ATTACHING IT TO THE DEPARTMENT OF ADMINISTRATION FOR  
 7 ADMINISTRATIVE PURPOSES ONLY; PROVIDING THAT THE WARDEN OF  
 8 THE PRISON IS TO BE APPOINTED BY THE GOVERNOR AND TO REPORT  
 9 DIRECTLY TO THE GOVERNOR; ESTABLISHING THE POWERS AND DUTIES  
 10 OF THE WARDEN; PROVIDING FOR THE REALLOCATION OF VARIOUS  
 11 INTERNAL PRISON FUNCTIONS TO THE PRISON FROM THE DEPARTMENT  
 12 OF INSTITUTIONS; AMENDING SECTIONS 2-18-303, 7-4-2913,  
 13 7-6-2427, 18-2-301, 18-4-104, 41-5-206, 44-5-202, 44-5-213,  
 14 46-19-303, 46-19-305, 50-3-102, 50-21-103, 53-1-202,  
 15 53-1-204, 53-1-206, 53-1-301 THROUGH 53-1-304, 53-30-102,  
 16 53-30-105 THROUGH 53-30-107, 53-30-109 THROUGH 53-30-111,  
 17 53-30-131 THROUGH 53-30-133, 53-30-141, 53-30-142,  
 18 53-30-212, 87-1-226, AND 87-1-512, MCA; AND PROVIDING AN  
 19 EFFECTIVE DATE."

20  
 21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 ~~NEW SECTION.~~ Section 1. Montana state prison --  
 23 warden -- allocation. (1) There is a Montana state prison.  
 24 (2) The head of the Montana state prison is the  
 25 warden. The warden is considered a director for the

1 purposes of 2-15-111, and the provisions of 2-15-111 apply  
 2 to him.

3 (3) The Montana state prison is allocated to the  
 4 department of administration for administrative purposes  
 5 only as prescribed in 2-15-121, except that:

6 (a) the warden may hire prison personnel, and  
 7 2-15-121(2)(d) does not apply;

8 (b) the warden shall communicate directly with the  
 9 governor, and 2-15-121(3)(a) does not apply; and

10 (c) the warden may allocate necessary prison space,  
 11 subject to disapproval by the governor, and 2-15-121(3)(b)  
 12 does not apply to allocation of office space at the Montana  
 13 state prison.

14 Section 2. Section 53-30-102, MCA, is amended to read:

15 "53-30-102. ~~Qualifications--of--warden~~ ~~Warden--~~  
 16 ~~qualifications--duties.~~ (1) The warden of the Montana  
 17 state prison shall be a person trained through education and  
 18 experience in directing a training, rehabilitation, or  
 19 custodial program in a penal institution.

20 (2) ~~The warden is responsible for the management and~~  
 21 ~~control of the Montana state prison.~~

22 (3) ~~The warden shall:~~

23 (a) ~~adopt rules for the admissions, custody, and~~  
 24 ~~release of inmates of the prison except as otherwise~~  
 25 ~~provided by law;~~

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~~(b) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to assist him in carrying out his functions relating to the administration of the prison and rehabilitation and reformation of inmates; and~~

~~(c) propose programs to the legislature to meet projected long-range needs of the prison."~~

Section 3. Section 2-18-303, MCA, is amended to read:

"2-18-303. Procedures for utilizing pay schedules. (1)

The pay schedules provided in [the adjusted schedules under] 2-18-311 and 2-18-312 shall be implemented as follows:

(a) The pay schedule provided in [the adjusted schedule under] 2-18-311 indicates the annual compensation for the fiscal year ending June 30, 1982, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(b) The pay schedule provided in [the adjusted schedule under] 2-18-312 indicates the annual compensation for the fiscal year ending June 30, 1983, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(c) Each new employee shall advance from step 1 to step 2 of a grade after successfully completing 6 months of probationary service. The anniversary date of an employee shall be established at the end of the probationary period

in accordance with rules promulgated by the department.

(d) (i) The compensation of each employee on the first day of the first pay period in fiscal year 1982 shall be that amount which corresponds to the grade and step occupied on the last day of the preceding fiscal year of 1981.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1983 shall be that amount which corresponds to the grade and step occupied on the last day of the fiscal year 1982.

(iii) In compliance with rules adopted to implement this part, each employee is eligible on his anniversary date to advance one step in the pay matrix each fiscal year. However, if the employee's anniversary date falls between (inclusive) July 1 and the first day of the first pay period of fiscal year 1982 or 1983, as the case may be, he will advance one step on the first day of that pay period.

(2) The pay schedules provided in [the adjusted schedules under] 2-18-311 and 2-18-312 and the provisions of subsection (1) of this section do not apply to those institutional teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in [the adjusted schedules under] 2-18-313, 2-18-314, or 2-18-315.

(3) The pay schedules provided in [the adjusted schedules under] 2-18-313, 2-18-314, or 2-18-315 shall be

1 implemented as follows:

2 (a) (i) The pay schedules provided in [the adjusted  
3 schedules under] 2-18-313 indicate the annual compensation  
4 for the contracted school term for teachers employed by  
5 institutions under the authority of the department of  
6 institutions for fiscal years 1982 and 1983.

7 (ii) The compensation of each teacher on the first day  
8 of the first pay period in July, 1981, shall be that amount  
9 which corresponds to his level of academic achievement and  
10 the next highest step from that occupied on June 30, 1981.

11 (iii) The compensation of each teacher on the first day  
12 of the first pay period in July, 1982, shall be that amount  
13 which corresponds to his level of achievement and the next  
14 highest step from that occupied on June 30, 1982.

15 (b) (i) The pay schedules provided in [the adjusted  
16 schedules under] 2-18-314 indicate the maximum hourly  
17 compensation for fiscal years ending June 30, 1982, and June  
18 30, 1983, for those employees in liquor store occupations  
19 who have collectively bargained separate classification and  
20 pay plans.

21 (ii) The compensation of each employee on the first day  
22 of the first pay period in fiscal year 1982 or 1983, as the  
23 case may be, shall be that amount which corresponds to that  
24 grade occupied on the last day of the preceding fiscal year.

25 (c) (i) The pay schedules provided in [the adjusted

1 schedules under] 2-18-315 indicate the maximum hourly  
2 compensation for fiscal years ending June 30, 1982, and June  
3 30, 1983, for employees in apprentice trades and crafts and  
4 other blue-collar occupations recognized in the state  
5 blue-collar classification plan who are members of units  
6 that have collectively bargained separate classification and  
7 pay plans.

8 (ii) The compensation of each employee on the first day  
9 of the first pay period in fiscal year 1982 or 1983, as the  
10 case may be, shall be that amount which corresponds to that  
11 grade occupied on the last day of the preceding fiscal year.

12 (4) (a) (i) No member of a bargaining unit may receive  
13 the amounts indicated in the respective pay schedules  
14 provided in [the adjusted schedules under] 2-18-311 through  
15 2-18-315 until the bargaining unit of which he is a member  
16 ratifies a completely integrated collective bargaining  
17 agreement covering the biennium ending June 30, 1983.

18 (ii) In the event that negotiation and ratification of  
19 a completely integrated collective bargaining agreement as  
20 required by subsection (4)(a)(i) of this section are not  
21 completed by July 1, 1981, retroactivity to that date may be  
22 negotiated.

23 (iii) In the event that negotiation and ratification of  
24 a completely integrated collective bargaining agreement as  
25 required by subsection (4)(a)(i) of this section are not

1 completed by July 1, 1981, members of the bargaining unit  
2 involved will continue to receive the compensation they were  
3 receiving as of June 30, 1981.

4 (b) Methods of administration not inconsistent with  
5 the purpose of this part and necessary to properly implement  
6 the pay schedules provided in [the adjusted schedules under]  
7 2-18-313 through 2-18-315 may be provided for in collective  
8 bargaining agreements.

9 (5) The current wage or salary of an employee shall  
10 not be reduced by the implementation of the pay schedules  
11 provided for in [the adjusted schedules under] 2-18-311  
12 through 2-18-315.

13 (6) The department may authorize a separate pay  
14 schedule for medical doctors if the rates provided in [the  
15 adjusted schedules under] 2-18-311 and 2-18-312 are not  
16 sufficient to attract and retain fully licensed and  
17 qualified physicians at the state institutions and the  
18 Montana state prison.

19 (7) The department may develop programs which will  
20 enable the department to mitigate problems associated with  
21 difficult recruitment, retention, transfer, or other  
22 exceptional circumstances. Insofar as the program may apply  
23 to employees within a collective bargaining unit, it shall  
24 be a negotiable subject under 39-31-305."

25 Section 4. Section 7-4-2913, MCA, is amended to read:

1 "7-4-2913. Payment of costs of inquest. Whenever an  
2 inquest is held because of the death of an individual  
3 confined in the state prison, the county clerk of the county  
4 where the inquest is held shall make out a statement of all  
5 the costs incurred by the county in the inquest, properly  
6 certified by the coroner of the county. This statement shall  
7 be sent to the ~~department--of--institutions~~ warden of the  
8 Montana state prison for approval, and after approval, the  
9 department ~~warden~~ shall pay the costs out of the money  
10 appropriated for the support of the state prison to the  
11 county treasurer of the county where the inquest was held."

12 Section 5. Section 7-6-2427, MCA, is amended to read:

13 "7-6-2427. Special provisions for certain charges  
14 related to criminal prosecutions. (1) Notwithstanding  
15 7-6-2426, all costs of a criminal prosecution, including  
16 attorneys' fees, of an offense committed in the state prison  
17 are not charges against the county in which the state prison  
18 is located. Such costs shall be paid by the ~~department-of~~  
19 institutions warden of the Montana state prison.

20 (2) When a criminal action is removed before trial,  
21 the costs accruing upon such removal and trial must be a  
22 charge against the county in which the indictment was found  
23 or information filed."

24 Section 6. Section 18-2-301, MCA, is amended to read:

25 "18-2-301. Bids required -- advertising. (1) It is

1 unlawful for the board of examiners or any offices,  
 2 departments, institutions, or any agent of the state of  
 3 Montana acting for or in behalf of the state to do, to cause  
 4 to be done, or to let any contract for the construction of  
 5 buildings or the alteration and improvement of buildings and  
 6 adjacent grounds on behalf of and for the benefit of the  
 7 state when the amount involved is \$25,000 or more without  
 8 first advertising in at least one issue each week for 3  
 9 consecutive weeks in two newspapers published in the state,  
 10 one of which must be published at the seat of government and  
 11 the other in the county where the work is to be performed,  
 12 calling for sealed bids to perform such work and stating the  
 13 time and place bids will be considered.

14 (2) All such work may be done, caused to be done, or  
 15 contracted for only after competitive bidding.

16 (3) If no bid for such work is accepted, the work may  
 17 not be done or accomplished. The work may be readvertised  
 18 from time to time until awarded to a qualified competitive  
 19 bidder.

20 (4) This section does not apply to work done by  
 21 inmates at ~~the Montana state prison or at~~ an institution in  
 22 the department of institutions."

23 Section 7. Section 18-4-104, MCA, is amended to read:

24 "18-4-104. Purchases exempt from general requirements.

25 (1) Fresh fruits and vegetables (other than potatoes) shall

1 not be included in the supplies to be purchased as provided  
 2 in this chapter. The department may allow a state agency or  
 3 institution to purchase fresh fruits and vegetables. An  
 4 itemized account shall be kept of these purchases and the  
 5 account shall be furnished to the department.

6 (2) Likewise, when immediate delivery of articles or  
 7 performance of service is required by the public exigencies,  
 8 the articles or service so required may be procured by open  
 9 purchase or contract at the place and in the manner in which  
 10 the articles are usually bought and sold or the services  
 11 engaged between individuals but under the direction of the  
 12 department.

13 (3) The department of administration may exempt the  
 14 department of institutions ~~and the Montana state prison~~ from  
 15 the provisions of part 2 of this chapter for the purchase of  
 16 suitable clothing by the department of institutions for  
 17 residents of its institutions and community-based programs  
 18 ~~and by the Montana state prison for its inmates.~~

19 (4) As used in this section, "suitable clothing" means  
 20 styled, seasonable clothing, which will allow the resident  
 21 to make a normal appearance in the community."

22 Section 8. Section 41-5-206, MCA, is amended to read:

23 "41-5-206. Transfer to criminal court. (1) After a  
 24 petition has been filed alleging delinquency, the court may,  
 25 upon motion of the county attorney, before hearing the

1 petition on its merits, transfer the matter of prosecution  
2 to the district court if:

3 (a) the youth charged was 16 years of age or more at  
4 the time of the conduct alleged to be unlawful and the  
5 unlawful act is one or more of the following:

- 6 (i) criminal homicide as defined in 45-5-101;
- 7 (ii) arson as defined in 45-6-103;
- 8 (iii) aggravated assault as defined in 45-5-202;
- 9 (iv) robbery as defined in 45-5-401;
- 10 (v) burglary or aggravated burglary as defined in
- 11 45-6-204;
- 12 (vi) sexual intercourse without consent as defined in
- 13 45-5-503;
- 14 (vii) aggravated kidnapping as defined in 45-5-303;
- 15 (viii) possession of explosives as defined in 45-8-335;
- 16 (ix) criminal sale of dangerous drugs for profit as
- 17 included in 45-9-101;
- 18 (x) attempt as defined in 45-4-103 of any of the acts
- 19 enumerated in subsections (1)(a)(i) through (1)(a)(ix);

20 (b) a hearing on whether the transfer should be made  
21 is held in conformity with the rules on a hearing on a  
22 petition alleging delinquency, except that the hearing will  
23 be to the youth court without a jury;

24 (c) notice in writing of the time, place, and purpose  
25 of the hearing is given to the youth, his counsel, and his

1 parents, guardian, or custodian at least 10 days before the  
2 hearing; and

3 (d) the court finds upon the hearing of all relevant  
4 evidence that there are reasonable grounds to believe that:

- 5 (i) the youth committed the delinquent act alleged;
- 6 (ii) the seriousness of the offense and the protection
- 7 of the community require treatment of the youth beyond that
- 8 afforded by juvenile facilities; and
- 9 (iii) the alleged offense was committed in an
- 10 aggressive, violent, or premeditated manner.

11 (2) In transferring the matter of prosecution to the  
12 district court, the court may also consider the following  
13 factors:

- 14 (a) the sophistication and maturity of the youth,
- 15 determined by consideration of his home, environmental
- 16 situation, and emotional attitude and pattern of living;
- 17 (b) the record and previous history of the youth,
- 18 including previous contacts with the youth court, law
- 19 enforcement agencies, youth courts in other jurisdictions,
- 20 prior periods of probation, and prior commitments to
- 21 juvenile institutions. However, lack of a prior juvenile
- 22 history with youth courts will not of itself be grounds for
- 23 denying the transfer.

24 (c) the severity of the offense;

25 (d) the prospects for adequate protection of the

public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services, and facilities currently available to the youth court.

(3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.

(4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth may be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(6) Any offense not enumerated in subsection (1)(a) that arises during the commission of a crime enumerated in subsection (1)(a) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1)(a), upon motion of the county attorney and acceptance by the district court judge.

(7) If a youth is found guilty in district court of any of the offenses enumerated in subsection (1)(a) of this

section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall either confine the youth in whatever institution it considers proper ~~or send the youth to the Montana state prison.~~

Section 9. Section 44-5-202, MCA, is amended to read:

"44-5-202. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

~~(b) the Montana state prison;~~

~~(b)(c) the department of institutions; and~~

~~(c)(d) the department of justice.~~

~~(2) The warden of the Montana state prison may photograph and fingerprint anyone who is an inmate of the prison.~~

~~(2)(3) The department of institutions may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.~~

~~(3)(4) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to~~



1 answer an information or indictment if:

- 2 (a) the charge is the commission of a felony;
- 3 (b) the identification of an accused is in issue; or
- 4 (c) it is required to do so by court order.

5 ~~(47)(51)~~ Whenever a person charged with the commission  
6 of a felony is not arrested, he shall submit himself to the  
7 sheriff, chief of police, or other concerned law enforcement  
8 officer for fingerprinting at the time of his initial  
9 appearance in court to answer the information or indictment  
10 against him.

11 ~~(57)(61)~~ A criminal justice agency described in  
12 subsection (1)(a) may photograph and fingerprint an accused  
13 if he has been arrested for the commission of a misdemeanor,  
14 except that an individual arrested for a traffic,  
15 regulatory, or fish and game offense may not be photographed  
16 or fingerprinted unless he is incarcerated.

17 ~~(67)(71)~~ Within 10 days the originating agency shall  
18 send the state repository a copy of each fingerprint taken  
19 on a completed form provided by the state repository.

20 ~~(77)(81)~~ The state repository shall compare the  
21 fingerprints received with those already on file in the  
22 state repository. If it is determined that the individual is  
23 wanted or is a fugitive from justice, the state repository  
24 shall at once inform the originating agency. If it is  
25 determined that the individual has a criminal record, the

1 state repository shall send the originating agency a copy of  
2 the individual's complete criminal history record.

3 ~~(87)(91)~~ Photographs and fingerprints taken shall be  
4 returned by the state repository to the originating agency,  
5 which shall return all copies to the individual from whom  
6 they were taken:

- 7 (a) if a court so orders; or
- 8 (b) upon the request of the individual:
  - 9 (i) if no charges were filed;
  - 10 (ii) if a misdemeanor charge did not result in a
  - 11 conviction; or
  - 12 (iii) if the individual was found innocent of the
  - 13 offense charged."

14 Section 10. Section 44-5-213, MCA, is amended to read:  
15 "44-5-213. Procedures to ensure accuracy of criminal  
16 history records. In order to ensure complete and accurate  
17 criminal history record information:

18 (1) the department of justice shall maintain a  
19 centralized state repository of criminal history record  
20 information to serve all criminal justice agencies in the  
21 state;

22 (2) dispositions resulting from formal proceedings in  
23 a court having jurisdiction in a criminal action against an  
24 individual who has been photographed and fingerprinted under  
25 44-5-202 shall be reported to the originating agency and the

1 state repository within 15 days. If the dispositions can  
2 readily be collected and reported through the court system,  
3 the dispositions may be submitted to the state repository by  
4 the administrative office of the courts.

5 (3) an originating agency shall advise the state  
6 repository within 30 days of all dispositions concerning the  
7 termination of criminal proceedings against an individual  
8 who has been photographed and fingerprinted under 44-5-202;

9 (4) ~~the Montana state prison and~~ the department of  
10 institutions shall advise the state repository within 30  
11 days of all dispositions subsequent to conviction of an  
12 individual who has been photographed and fingerprinted under  
13 44-5-202;

14 (5) each criminal justice agency shall query the state  
15 repository prior to dissemination of any criminal history  
16 record information to ensure the timeliness of the  
17 information. When no final disposition is shown by the state  
18 repository records, the state repository shall query the  
19 source of the document or other appropriate source for  
20 current status. Inquiries shall be made prior to any  
21 dissemination except in those cases in which time is of the  
22 essence and the repository is technically incapable of  
23 responding within the necessary time period. If time is of  
24 the essence, the inquiry shall still be made and the  
25 response shall be forwarded as soon as it is received.

1 (6) each criminal justice agency shall ensure that all  
2 its criminal justice information is complete, accurate, and  
3 current; and

4 (7) the department of justice shall adopt rules for  
5 criminal justice agencies other than those that are part of  
6 the judicial branch of government to implement this section.  
7 The department of justice may adopt rules for the same  
8 purpose for the judicial branch of government if the supreme  
9 court consents to the rules."

10 Section 11. Section 46-19-303, MCA, is amended to  
11 read:

12 "46-19-303. Power of governor to enter into contracts.  
13 The governor is hereby empowered to designate ~~the warden of~~  
14 ~~the Montana state prison or~~ the department of institutions  
15 to enter into such contracts recommended by the ~~warden or by~~  
16 the department on behalf of this state as may be appropriate  
17 to implement the participation of this state in the Western  
18 Interstate Corrections Compact pursuant to 46-19-301."

19 Section 12. Section 46-19-305, MCA, is amended to  
20 read:

21 "46-19-305. Hearings requested by other states. The  
22 board of pardons, ~~the warden of the Montana state prison,~~  
23 and the department of institutions shall hold such hearings  
24 as may be requested by any other party state pursuant to  
25 Article IV(6) of the Western Interstate Corrections

1 Compact."

2 Section 13. Section 50-3-102, MCA, is amended to read:

3 "50-3-102. Powers and duties of state fire marshal.

4 (1) For the purpose of reducing the state's fire loss, the  
5 state fire marshal shall:

6 (a) make at least one inspection a year of each state  
7 institution ~~in the department of institutions~~ and submit a  
8 copy of the report to the department of institutions with  
9 recommendations in regard to fire prevention, fire  
10 protection, and public safety;

11 ~~(b) make at least one inspection a year of the Montana~~  
12 ~~state prison and submit a copy of the report to the warden~~  
13 ~~of the Montana state prison with recommendations in regard~~  
14 ~~to fire prevention, fire protection, and public safety;~~

15 ~~(b)(c)~~ make at least one inspection a year of each  
16 unit of the Montana university system and submit a copy of  
17 the report to the commissioner of higher education with  
18 recommendations in regard to fire prevention, fire  
19 protection, and public safety;

20 ~~(c)(d)~~ inspect public, business, or industrial  
21 buildings and require conformance to law and rules  
22 promulgated under the provisions of this chapter;

23 ~~(d)(e)~~ assist local fire and law enforcement  
24 authorities in arson investigations and supervise such  
25 investigations when, in his judgment, supervision is

1 necessary;

2 ~~(e)(f)~~ review all training programs on investigation  
3 of accidental and incendiary fires;

4 ~~(f)(g)~~ provide fire prevention and fire protection  
5 information to public officials and the general public;

6 ~~(g)(h)~~ encourage and assist local fire authorities in  
7 fire prevention programs and adopt standards and implement a  
8 program to encourage fire departments to meet such  
9 standards;

10 ~~(h)(i)~~ be the state entity primarily responsible for  
11 promoting fire safety at the state level and to represent  
12 the state in structural fire matters;

13 ~~(i)(j)~~ encourage coordination of all services and  
14 agencies in structural fire matters to reduce duplication  
15 and fill voids in services;

16 ~~(j)(k)~~ establish rules concerning responsibilities and  
17 procedures to be followed when there is a threat of  
18 explosive material in a building housing state offices;

19 ~~(k)(l)~~ keep in his office a record of all fires  
20 occurring in the state, the origin of the fires, and all  
21 facts, statistics, and circumstances relating thereto which  
22 have been determined by investigations under the provisions  
23 of chapter 63 of this title; and, except for statements of  
24 witnesses given during an investigation and information that  
25 may be held in confidence under 50-63-403, the record shall

1 be open at all times to public inspection; and  
 2 (1) make an annual report to the attorney general  
 3 containing a detailed statement of his official action and  
 4 the transactions of his department, and the attorney general  
 5 shall, in turn, submit the report to the governor with such  
 6 recommendations and comments thereon as he considers  
 7 necessary.

8 (2) The state fire marshal may:  
 9 (a) adopt rules necessary for safeguarding life and  
 10 property from the hazards of fire and explosion and carrying  
 11 into effect the fire prevention laws of this state; and  
 12 (b) if necessary to safeguard life and property under  
 13 rules promulgated pursuant to this section, maintain an  
 14 action to enjoin the use of all or a portion of a building  
 15 or restrain a specific activity until there is compliance  
 16 with the rules."

17 Section 14. Section 50-21-103, MCA, is amended to  
 18 read:

19 "50-21-103. Limitations on right to perform autopsy or  
 20 dissection. The right to perform an autopsy, dissect a human  
 21 body, or make any post-mortem examination involving  
 22 dissection of any part of a body is limited to cases where:

23 (1) specifically authorized by law;  
 24 (2) a coroner is authorized to hold an inquest and  
 25 then only to the extent that the coroner may authorize

1 dissection or autopsy;

2 (3) authorized by a written statement of the deceased,  
 3 whether the statement is of a testamentary character or  
 4 otherwise;

5 (4) authorized by the husband, wife, or next of kin  
 6 responsible by law for burial to determine the cause of  
 7 death and then only to the extent so authorized;

8 (5) the decedent died in a hospital operated by the  
 9 United States veterans administration, the Montana school  
 10 for the deaf and blind, the Montana state prison, or an  
 11 institution in the department of institutions leaving no  
 12 surviving husband, wife, or next of kin responsible by law  
 13 for burial and the manager or superintendent of the hospital  
 14 or institution where death occurred obtains authority on  
 15 order of the district court to determine the cause of death  
 16 and then only to the extent authorized by court order;

17 (6) the decedent died in the state, was a resident,  
 18 but left no surviving husband, wife, or next of kin charged  
 19 by law with the duty of burial and the attending physician  
 20 obtains authority on order of the district court for the  
 21 purpose of ascertaining the cause of death and then only to  
 22 the extent authorized by court order after it has been shown  
 23 that the physician made diligent search for the next of kin  
 24 responsible by law for burial."

25 Section 15. Section 53-1-202, MCA, is amended to read:

1 "53-1-202. Institutions in department. (1) The  
2 following institutions are in the department:

- 3 (a) Galen state hospital;
- 4 (b) Montana veterans' home;
- 5 (c) ~~State prison~~
- 6 (d) (c) Mountain View school;
- 7 (e) (d) Pine Hills school;
- 8 (f) (e) Boulder River school and hospital;
- 9 (g) (f) Warm Springs state hospital;
- 10 (h) (g) Montana center for the aged;
- 11 (i) (h) Swan River youth forest camp;
- 12 (j) (i) Eastmont training center;
- 13 (k) (j) Any other institution which provides care and  
14 services for juvenile delinquents, including but not limited  
15 to youth forest camps and juvenile reception and evaluation  
16 centers.

17 (2) A state institution may not be moved,  
18 discontinued, or abandoned without prior consent of the  
19 legislature."

20 Section 16. Section 53-1-204, MCA, is amended to read:

21 "53-1-204. Responsibility of ~~warden~~-----and  
22 superintendents of institutions. The ~~warden~~-----or  
23 superintendents of institutions in the department are  
24 responsible for the immediate management and control of  
25 their respective institutions, subject to the general

1 policies and programs established by the department."

2 Section 17. Section 53-1-206, MCA, is amended to read:

3 "53-1-206. Participation by institutions and prison in  
4 research programs. The department may ~~direct require that~~ a  
5 penal and corrective institution ~~of--the state--to in the~~  
6 ~~department and the warden may elect to have the Montana~~  
7 ~~state prison~~ participate in and cooperate with programs of  
8 research and development being conducted and carried on by  
9 any units of the Montana university system, by any of the  
10 other educational institutions of the state of Montana, or  
11 by any foundation or agency thereof in the fields of  
12 science, health, education, and natural resources. These  
13 programs may include the voluntary participation of the  
14 inmates of the institution ~~or prison~~ in testing and  
15 experimental work conducted as a part thereof. Any funds  
16 received from the authorized programs may be shared with the  
17 participating inmates or otherwise held and used for the  
18 welfare and rehabilitation thereof and may not become a part  
19 of the regular budgeted operation of the institution ~~or~~  
20 ~~prison~~."

21 Section 18. Section 53-1-301, MCA, is amended to read:

22 "53-1-301. Permitted institutional and prison  
23 industries, ~~powers--of--department--and~~ == incentive pay to  
24 inmates. ~~The both the department and the warden of the~~  
25 ~~Montana state prison~~ may:

1 (1) establish industries in ~~facilities under their~~  
 2 ~~jurisdiction, including institutions under the department of~~  
 3 ~~institutions and the Montana state prison,~~ which will result  
 4 in the production or manufacture of such products and the  
 5 rendering of such services as may be needed by any  
 6 department or agency of the state or any political  
 7 subdivision thereof, by any agency of the federal  
 8 government, by any other states or their political  
 9 subdivisions, or by nonprofit organizations and that will  
 10 assist in the rehabilitation of residents in ~~institutions~~  
 11 ~~such facilities;~~

12 (2) contract with private industry for the sale of  
 13 goods or components manufactured or produced in shops under  
 14 ~~its~~ ~~their~~ jurisdiction;

15 (3) print catalogs describing goods manufactured or  
 16 produced by ~~institutions a facility~~ and distribute the  
 17 catalogs;

18 (4) fix the sale price for goods produced or  
 19 manufactured at ~~institutions a facility~~. Prices shall not  
 20 exceed prices existing in the open market for goods of  
 21 comparable quality.

22 (5) require ~~institutions a facility under their~~  
 23 ~~jurisdiction~~ to purchase needed goods from other  
 24 ~~institutions facilities;~~

25 (6) provide for the repair and maintenance of property

1 and equipment of ~~institutions a facility~~ by residents of  
 2 ~~institutions facilities;~~

3 (7) provide for construction projects up to the  
 4 aggregate sum of \$25,000 per project, by residents of  
 5 ~~institutions facilities;~~ provided, however, said  
 6 construction work is not covered by a collective bargaining  
 7 agreement;

8 (8) provide for the repair and maintenance at an  
 9 ~~institution a facility~~ of furniture and equipment of any  
 10 state agency;

11 (9) provide for the manufacture at ~~an institution a~~  
 12 ~~facility~~ of motor vehicle license plates and other related  
 13 articles;

14 (10) with the approval of the ~~warden or~~ department,  
 15 sell manufactured or agricultural products and livestock on  
 16 the open market;

17 (11) provide for the manufacture at ~~an institution a~~  
 18 ~~facility~~ of highway, road, and street marking signs for the  
 19 use of the state or any of its political subdivisions,  
 20 except when the manufacture of the signs is in violation of  
 21 a collective bargaining contract;

22 (12) (a) pay an inmate or resident of ~~an institution a~~  
 23 ~~facility~~ from receipts from the sale of products produced or  
 24 manufactured or services rendered in a program in which he  
 25 is working.

1 (b) Payment for the performance of work may be based  
 2 on the following criteria:  
 3 (i) knowledge and skill;  
 4 (ii) attitude toward authority;  
 5 (iii) physical effort;  
 6 (iv) responsibility for equipment and materials;  
 7 (v) regard for safety of others.  
 8 (c) The maximum rate of pay shall be determined by the  
 9 appropriation established for each program."

10 Section 19. Section 53-1-302, MCA, is amended to read:  
 11 "53-1-302. Disposition of receipts from sale of goods.  
 12 Receipts from the sale of goods produced or manufactured by  
 13 ~~the Montana state prison or by~~ an institution ~~in the~~  
 14 ~~department of institutions~~ shall be deposited in the  
 15 revolving fund account for the use of the industries program  
 16 of the ~~prison or~~ institution. At the end of each biennium,  
 17 all unobligated revolving funds over a \$50,000 ending-fund  
 18 balance, except for those funds reserved for equipment  
 19 replacement as determined by an equipment replacement  
 20 schedule, shall revert to the state general fund account."

21 Section 20. Section 53-1-303, MCA, is amended to read:  
 22 "53-1-303. Prohibited acts. Unless permitted by the  
 23 department ~~or the warden of the Montana state prison,~~  
 24 arranging for the labor of a resident of an institution in  
 25 ~~the department of institutions or inmate of the prison~~ is

1 prohibited."

2 Section 21. Section 53-1-304, MCA, is amended to read:  
 3 "53-1-304. Supervision of industries program. ~~The~~  
 4 ~~Except for the industries program operated by the Montana~~  
 5 ~~state prison, the~~ industries program shall be supervised by  
 6 the director of the department of institutions or his  
 7 designated representative, provided the administration of  
 8 the industries program is separate from the administration  
 9 of any institution where the program may be located."

10 Section 22. Section 53-30-105, MCA, is amended to  
 11 read:

12 "53-30-105. Good time allowance. (1) ~~The department of~~  
 13 ~~institutions warden of the Montana state prison~~ shall adopt  
 14 rules providing for the granting of good time allowance for  
 15 inmates employed in any prison work or activity. The good  
 16 time allowance shall operate as a credit on his sentence as  
 17 imposed by the court, conditioned upon the inmate's good  
 18 behavior and compliance with the rules made by the  
 19 ~~department--or~~ the warden. The rules adopted by the  
 20 ~~department warden~~ may not grant good time allowance to  
 21 exceed:

22 (a) 10 days per month for inmates assigned to maximum,  
 23 close, and medium I security classifications;

24 (b) 13 days per month for those classified as medium  
 25 II and minimum security classifications;

1 (c) 15 days per month for inmates after having been  
2 assigned as medium II or minimum security for an  
3 uninterrupted period of 1 year;

4 (d) 13 days per month for those inmates enrolled in  
5 school who successfully complete the course of study or who  
6 while so enrolled are released from prison by discharge or  
7 parole;

8 (e) 3 days per month for those inmates participating  
9 in self-improvement activities designated by the department.

10 (2) In the event of an attempted escape by an inmate  
11 or a violation of the rules prescribed by the ~~department or~~  
12 warden, the inmate may be punished by the forfeiture of part  
13 or all good time allowances. ~~The warden of the state prison~~  
14 ~~shall advise the department of any attempted escape or~~  
15 ~~violation of rules on the part of the inmate. Any punishment~~  
16 ~~by forfeiture of good time allowance must be approved by the~~  
17 ~~department.~~

18 (3) A person may not earn good time under this section  
19 while he is on probation or parole."

20 Section 23. Section 53-30-106, MCA, is amended to  
21 read:

22 "53-30-106. Contracts for confinement of inmates in  
23 other institutions. (1) When the state prison is inadequate  
24 to contain an inmate sentenced to confinement there, the  
25 ~~department of institutions warden of the Montana state~~

1 ~~prison~~ may enter into contracts with the federal government,  
2 other states, or the commissioners of counties that have  
3 suitable jails for confining inmates sentenced to the state  
4 prison.

5 (2) Within budgetary limits, the department ~~warden~~ may  
6 also enter into contracts with public or private  
7 corporations for the confinement of selected inmates where  
8 suitable programs have been established."

9 Section 24. Section 53-30-107, MCA, is amended to  
10 read:

11 "53-30-107. Establishment of intensive rehabilitation  
12 center authorized. Within the budgetary limits provided by  
13 law, the ~~department of institutions warden of the Montana~~  
14 ~~state prison~~ may establish on property owned by the state on  
15 which prison facilities are or may be located a prison  
16 facility designed to segregate certain types of prisoners."

17 Section 25. Section 53-30-109, MCA, is amended to  
18 read:

19 "53-30-109. Management and control of intensive  
20 rehabilitation center. The warden of the Montana state  
21 ~~prison subject to the supervision and control of the~~  
22 ~~department of institutions~~ shall operate and manage such  
23 intensive rehabilitation center and shall make such rules  
24 for the operation, management, and admission to such center  
25 as may from time to time be necessary and desirable."



1 Section 26. Section 53-30-110, MCA, is amended to  
2 read:

3 "53-30-110. Expense of trial for offenses committed in  
4 prison. Whenever a trial of any person takes place under any  
5 of the provisions of 45-7-306 and whenever a prisoner in the  
6 state prison is tried for any crime committed therein, the  
7 county clerk of the county where such trial is held shall  
8 make out a statement of all the costs incurred by the county  
9 for the trial of such case and of guarding and keeping such  
10 prisoner, properly certified by a district judge of said  
11 county, which statement shall be sent to the department-of  
12 institutions warden of the Montana state prison for ~~its~~ his  
13 approval. After such approval, the department warden must  
14 cause the amount of such costs to be paid out of the money  
15 appropriated for the support of the state prison to the  
16 county treasurer of the county where such trial was held."

17 Section 27. Section 53-30-111, MCA, is amended to  
18 read:

19 "53-30-111. Clothing and money furnished on discharge  
20 or parole. The state prison shall furnish suitable clothing  
21 to a discharged or paroled inmate. An inmate discharged and  
22 delivered to the custody of the federal government or  
23 another state shall receive \$5; all other discharged or  
24 paroled inmates may receive "gate money" in an amount up to  
25 \$100. The department-of-institutions warden of the Montana

1 state prison may establish rules which allow it ~~him~~ to  
2 deduct up to one-fourth of an inmate's wages earned under  
3 53-1-301 and hold that money in a special account to be  
4 disbursed to the inmate when he is discharged or paroled.  
5 This amount shall be in addition to the "gate money".

6 Section 28. Section 53-30-131, MCA, is amended to  
7 read:

8 "53-30-131. Prison industries training program --  
9 purpose and scope. (1) In addition to any institutional  
10 industry operated at the Montana state prison under Title  
11 53, chapter 1, part 3, the department-of-institutions warden  
12 shall conduct a prison industries training program.

13 (2) The purpose of the prison industries training  
14 program is to:

15 (a) provide innovative and progressive inmate  
16 reformation and rehabilitation possibilities by exposing  
17 inmates to worthwhile training;

18 (b) prepare inmates for release by providing  
19 industries at the prison that utilize their skills, thus  
20 providing experience beyond mere training, inculcating  
21 inmates with good production and work habits, and providing  
22 them with a means to earn money that will be available to  
23 them upon release.

24 (3) The prison industries training program consists of  
25 vocational training, on-the-job training, and production

experience. The department ~~warden~~ may contract with public and private vocational education entities to provide this training.

(4) The program may provide training and experience involving cultivation, production, repair, construction, refurbishment, service, and related processes involving personal property, including but not limited to such items as crops, livestock, furniture, office and electrical equipment, and motor vehicles. Such products and services, with the exception of livestock and agricultural products produced from the Montana state prison ranch, may be provided only to state agencies, local government units, school districts, authorities, and other governmental entities."

Section 29. Section 53-30-132, MCA, is amended to read:

"53-30-132. Inmate participation and status -- prison industries training program. (1) An inmate participating in the prison industries training program may be granted a good time allowance, not to exceed 15 days per month, notwithstanding the limits contained in 53-30-105, for outstanding participation in the program as defined by rules adopted by the ~~department--of--institutions warden of the Montana state prison~~. Such good time allowance has the same effect as a good time allowance granted under 53-30-105, and

the provisions of subsections (2) and (3) of 53-30-105 apply to such good time allowance. However, no inmate may receive good time for participation in this program under any other section or rule which would duplicate the good time authorized herein.

(2) While engaged in on-the-job training and production, inmates may be paid a wage commensurate with their production function. Such wages shall be established at a rate that encourages efficient production and effective levels of inmate participation.

(3) Inmates working in the prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to such inmates.

(4) Able-bodied persons committed to the Montana state prison as adult offenders shall be required to perform work as provided for by the ~~department-of--institutions warden~~."

Section 30. Section 53-30-133, MCA, is amended to read:

"53-30-133. Administration of prison industries training program. (1) (a) The prison industries training program need not be a self-supporting program. The ~~department--of--institutions warden of the Montana state prison~~ may enter into contracts and establish prices for products or services produced by this program. Within

1 budgetary restrictions, the department warden shall  
2 establish prices that tend to maximize the amount of work  
3 available for inmates. All revenue raised through the  
4 program may be used only for the program.

5 (b) State agencies, local governments, school  
6 districts, authorities, and other local government entities  
7 are encouraged to explore the possibilities of using the  
8 prison industries training program. State agencies shall  
9 cooperate with the department--of--institutions warden in  
10 notifying governmental entities within the state of the  
11 program and of the services and products that are available.

12 (2) (a) The department--of--institutions warden shall  
13 adopt rules implementing this program and shall report to  
14 the legislature its his continuing plans and recommendations  
15 in implementing this program. Any price lists established by  
16 the department warden are exempt from the provisions of  
17 Title 2, chapter 4 (the Montana Administrative Procedure  
18 Act), but the department warden may, if it he considers it  
19 an effective method of dissemination, publish such price  
20 lists in the Montana Administrative Register or the  
21 Administrative Rules of Montana, or both.

22 (b) The department-of-institutions prison industries  
23 training program is subject to program audits of-the-prison  
24 industries-training-program by the legislative auditor."

25 Section 31. Section 53-30-141, MCA, is amended to

1 read:

2 "53-30-141. Extension of limits of confinement. (1)  
3 The department-of-institutions warden-of-the-Montana-state  
4 prison may extend the limits of confinement of the Montana  
5 state prison for purposes of housing outside the prison  
6 fence inmates who:

7 (a) are employed in ranch or agricultural industry  
8 programs; and

9 (b) have demonstrated sufficient reliability and  
10 trustworthiness.

11 (2) Housing units outside the confines of the prison  
12 fence may be created by renovation of existing buildings or  
13 by the erection of modular-type units and associated  
14 facilities on the prison ranch.

15 (3) For the purpose of expediting the acquisition and  
16 construction of housing units authorized in subsection 2 the  
17 department of administration may exempt the project from  
18 provisions of Montana law relating to the employment of  
19 architects, advertising, labor, and wages. The department of  
20 administration need not comply with any state bidding  
21 requirements that would preclude a sole source purchase."

22 Section 32. Section 53-30-142, MCA, is amended to  
23 read:

24 "53-30-142. Escape from extended confinement.  
25 Purposeful or knowing failure of an inmate to remain within

1 the extended limits of his confinement or to return within  
 2 the time prescribed by prison officials to the place of  
 3 confinement designated by the department ~~warden of the~~  
 4 ~~Montana state prison~~ is an escape punishable as provided in  
 5 45-7-306."

6 Section 33. Section 53-30-212, MCA, is amended to  
 7 read:

8 \*53-30-212. Commutation of sentence to state prison  
 9 and transfer of prisoner to juvenile correctional facility.

10 (1) Upon the application of a person under 21 years of age  
 11 who has been sentenced to the state prison or upon the  
 12 application of his parents or guardian, the governor may,  
 13 after consulting with ~~the warden of the Montana state prison~~  
 14 ~~and~~ the department of institutions and with the approval of  
 15 the board of pardons, commute the sentence by committing  
 16 such person to the department until he is 21 years of age or  
 17 until sooner placed or discharged.

18 (2) If such person's behavior after being committed to  
 19 the department indicates that he is not a proper person to  
 20 reside at one of the department's juvenile facilities, the  
 21 governor, after consulting with ~~the warden and~~ the  
 22 department and with the approval of the board of pardons,  
 23 may revoke the commutation and return him to the state  
 24 prison to serve out his unexpired term, and the time spent  
 25 by him at one of the department's juvenile facilities or

1 while a refugee from one of the department's juvenile  
 2 facilities shall not be considered as a part of his original  
 3 sentence.

4 (3) Upon recommendation of the warden and with the  
 5 approval of the department, a person under 21 years of age  
 6 who has been sentenced to the state prison may be  
 7 transferred to any juvenile facility under the jurisdiction  
 8 and control of the department.

9 (4) Upon recommendation of the warden and approval of  
 10 a person sentenced to the state prison or application of a  
 11 person sentenced to the state prison and approval of the  
 12 warden and with the approval of the department, such person  
 13 sentenced to the state prison who is 25 years of age or  
 14 younger may be transferred to the Swan River youth forest  
 15 camp. Upon such transfer such person shall be under the  
 16 supervision and control of the facility to which he is  
 17 transferred.

18 (5) If such person's behavior after transfer to such  
 19 juvenile facility indicates he might be released on parole  
 20 or his sentence be commuted and he be discharged from  
 21 custody, the superintendent of such facility, with the  
 22 approval of the department, may make an appropriate  
 23 recommendation to the state board of pardons and the  
 24 governor, who may, in their discretion, parole such person  
 25 or commute his sentence.

1 (6) If such person's behavior after transfer to a  
 2 juvenile facility indicates he is not a proper person to  
 3 reside in such facility, upon recommendation of the  
 4 superintendent and with the approval of the department and  
 5 ~~the warden~~, such person shall be returned to the state  
 6 prison to serve out his unexpired term."

7 Section 34. Section 87-1-226, MCA, is amended to read:  
 8 "87-1-226. Disposition of meat of animals damaging  
 9 property. The meat of all animals killed or destroyed  
 10 pursuant to 87-1-225 by the department or the authorized  
 11 landholder shall be conserved and given to ~~the Montana state~~  
 12 ~~prison~~, state institutions, school lunch programs, or the  
 13 department of social and rehabilitation services. The  
 14 department shall provide transportation and distribution of  
 15 the meat."

16 Section 35. Section 87-1-512, MCA, is amended to read:  
 17 "87-1-512. Certificate of sale. Upon the sale of  
 18 property as provided in 87-1-511, the officer shall issue a  
 19 certificate to the purchasing party, certifying that the  
 20 purchaser has the legal right to be in possession of the  
 21 property and that anyone so acquiring this property from the  
 22 state is prohibited from reselling or using the same for any  
 23 commercial purpose. During an auction only one carcass of  
 24 either deer, moose, or elk may be purchased per person. At  
 25 its discretion, the department may donate unsold carcasses

1 to welfare departments, public institutions, ~~the Montana~~  
 2 ~~state prison~~, or charitable institutions."

3 ~~NEW SECTION.~~ Section 36. Codification instruction.  
 4 Section 1 is intended to be codified as an integral part of  
 5 Title 2, chapter 15, part 10, and the provisions of Title 2,  
 6 chapter 15, apply to section 1.

7 ~~NEW SECTION.~~ Section 37. Effective date. This act is  
 8 effective July 1, 1983.

-End-

## STATE OF MONTANA

REQUEST NO. 381-83

## FISCAL NOTE

Form BD-15

In compliance with a written request received February 14, , 19 83 , there is hereby submitted a Fiscal Note for Senate Bill 390 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 390 removes the Montana State Prison from the control of the Department of Institutions and attaches it to the Department of Administration for administrative purposes only.

ASSUMPTIONS:

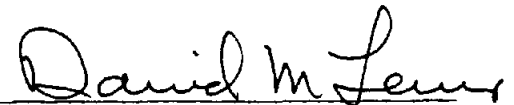
- 1) Use the 1984-85 executive current level budget for appropriation levels.
- 2) The Prison Ranch, Industries, Canteen and License Plate Factory would be transferred along with the Prison.

FISCAL IMPACT:

The appropriations for the Prison would be transferred to the Department of Administration:

	<u>FY84</u>	<u>FY85</u>
Prison	\$ 9,331,806	\$ 9,459,257
Ranch & Dairy	1,863,086	2,005,204
Industries	348,589	362,063
Canteen	400,513	450,439
License Plate Factory	498,153	526,769
Totals	<u>\$12,442,147</u>	<u>\$12,803,732</u>

FISCAL IMPACT 13:U/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-16-83

1                   STATEMENT OF INTENT

2                   SENATE BILL 390

3           Senate State Administration Committee

4

5           This bill requires a statement of intent because

6 section 2 provides that the warden of the Montana state

7 prison shall adopt certain rules relating to admission,

8 custody, and release of inmates at the prison. Such rules

9 are not intended to be subject to the Montana Administrative

10 Procedure Act, as provided in 2-4-102, MCA, and shall

11 address the administration and general internal operating

12 procedures and policies of the prison with regard to

13 supervision, custody, control, care and treatment of

14 inmates.

SECOND READING

SB 390

Approved by Committee  
on State Administration

## SENATE BILL NO. 390

INTRODUCED BY BOYLAN, DANIELS, GRAHAM, E. SMITH,  
TVEIT, CONOVER, LYNCH, THOFT, ELLERD, BRAND

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE MONTANA  
STATE PRISON FROM CONTROL OF THE DEPARTMENT OF INSTITUTIONS  
AND ATTACHING IT TO THE DEPARTMENT OF ADMINISTRATION FOR  
ADMINISTRATIVE PURPOSES ONLY; PROVIDING THAT THE WARDEN OF  
THE PRISON IS TO BE APPOINTED BY THE GOVERNOR AND TO REPORT  
DIRECTLY TO THE GOVERNOR; ESTABLISHING THE POWERS AND DUTIES  
OF THE WARDEN; PROVIDING FOR THE REALLOCATION OF VARIOUS  
INTERNAL PRISON FUNCTIONS TO THE PRISON FROM THE DEPARTMENT  
OF INSTITUTIONS; AMENDING SECTIONS 2-18-303, 7-4-2913,  
7-6-2427, 18-2-301, 18-4-104, 41-5-206, 44-5-202, 44-5-213,  
46-19-303, 46-19-305, 50-3-102, 50-21-103, 53-1-202,  
53-1-204, 53-1-206, 53-1-301 THROUGH 53-1-304, 53-30-102,  
53-30-105 THROUGH 53-30-107, 53-30-109 THROUGH 53-30-111,  
53-30-131 THROUGH 53-30-133, 53-30-141, 53-30-142,  
53-30-212, 87-1-226, AND 87-1-512, MCA; AND PROVIDING AN  
EFFECTIVE DATE."

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

~~NEW SECTION.~~ Section 1. Montana state prison --  
warden -- allocation. (1) There is a Montana state prison.  
(2) The head of the Montana state prison is the

warden. The warden is considered a director for the  
purposes of 2-15-111, and the provisions of 2-15-111 apply  
to him.

(3) The Montana state prison is allocated to the  
department of administration for administrative purposes  
only as prescribed in 2-15-121, except that:

(a) the warden may hire prison personnel, and  
2-15-121(2)(d) does not apply;

(b) the warden shall communicate directly with the  
governor, and 2-15-121(3)(a) does not apply; and

(c) the warden may allocate necessary prison space,  
subject to disapproval by the governor, and 2-15-121(3)(b)  
does not apply to allocation of office space at the Montana  
state prison.

Section 2. Section 53-30-102, MCA, is amended to read:

"53-30-102. ~~Qualifications---of---warden~~ Warden ---  
~~qualifications---~~ duties. All the warden of the Montana  
state prison shall be a person trained through education and  
experience in directing a training, rehabilitation, or  
custodial program in a penal institution.

~~121. The warden is responsible for the management and  
control of the Montana state prison.~~

~~(3) The warden shall:~~

~~(a) adopt rules for the admission, custody, and  
release of inmates of the prison except as otherwise~~



provided by law:

(b) ~~use the staff and services of other state agencies and units of the Montana university system within their respective statutory functions to assist him in carrying out his functions relating to the administration of the prison and rehabilitation and reformation of inmates; and~~

(c) ~~propose programs to the legislature to meet projected long-range needs of the prison.~~"

Section 3. Section 2-18-303, MCA, is amended to read:

"2-18-303. Procedures for utilizing pay schedules. (1)

The pay schedules provided in [the adjusted schedules under] 2-18-311 and 2-18-312 shall be implemented as follows:

(a) The pay schedule provided in [the adjusted schedule under] 2-18-311 indicates the annual compensation for the fiscal year ending June 30, 1982, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(b) The pay schedule provided in [the adjusted schedule under] 2-18-312 indicates the annual compensation for the fiscal year ending June 30, 1983, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(c) Each new employee shall advance from step 1 to step 2 of a grade after successfully completing 6 months of probationary service. The anniversary date of an employee

shall be established at the end of the probationary period in accordance with rules promulgated by the department.

(d) (i) The compensation of each employee on the first day of the first pay period in fiscal year 1982 shall be that amount which corresponds to the grade and step occupied on the last day of the preceding fiscal year of 1981.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1983 shall be that amount which corresponds to the grade and step occupied on the last day of the fiscal year 1982.

(iii) In compliance with rules adopted to implement this part, each employee is eligible on his anniversary date to advance one step in the pay matrix each fiscal year. However, if the employee's anniversary date falls between (inclusive) July 1 and the first day of the first pay period of fiscal year 1982 or 1983, as the case may be, he will advance one step on the first day of that pay period.

(2) The pay schedules provided in [the adjusted schedules under] 2-18-311 and 2-18-312 and the provisions of subsection (1) of this section do not apply to those institutional teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in [the adjusted schedules under] 2-18-313, 2-18-314, or 2-18-315.

(3) The pay schedules provided in [the adjusted

1 schedules under] 2-18-313, 2-18-314, or 2-18-315 shall be  
2 implemented as follows:

3 (a) (i) The pay schedules provided in [the adjusted  
4 schedules under] 2-18-313 indicate the annual compensation  
5 for the contracted school term for teachers employed by  
6 institutions under the authority of the department of  
7 institutions for fiscal years 1982 and 1983.

8 (ii) The compensation of each teacher on the first day  
9 of the first pay period in July, 1981, shall be that amount  
10 which corresponds to his level of academic achievement and  
11 the next highest step from that occupied on June 30, 1981.

12 (iii) The compensation of each teacher on the first day  
13 of the first pay period in July, 1982, shall be that amount  
14 which corresponds to his level of achievement and the next  
15 highest step from that occupied on June 30, 1982.

16 (b) (i) The pay schedules provided in [the adjusted  
17 schedules under] 2-18-314 indicate the maximum hourly  
18 compensation for fiscal years ending June 30, 1982, and June  
19 30, 1983, for those employees in liquor store occupations  
20 who have collectively bargained separate classification and  
21 pay plans.

22 (ii) The compensation of each employee on the first day  
23 of the first pay period in fiscal year 1982 or 1983, as the  
24 case may be, shall be that amount which corresponds to that  
25 grade occupied on the last day of the preceding fiscal year.

1 (c) (i) The pay schedules provided in [the adjusted  
2 schedules under] 2-18-315 indicate the maximum hourly  
3 compensation for fiscal years ending June 30, 1982, and June  
4 30, 1983, for employees in apprentice trades and crafts and  
5 other blue-collar occupations recognized in the state  
6 blue-collar classification plan who are members of units  
7 that have collectively bargained separate classification and  
8 pay plans.

9 (ii) The compensation of each employee on the first day  
10 of the first pay period in fiscal year 1982 or 1983, as the  
11 case may be, shall be that amount which corresponds to that  
12 grade occupied on the last day of the preceding fiscal year.

13 (4) (a) (i) No member of a bargaining unit may receive  
14 the amounts indicated in the respective pay schedules  
15 provided in [the adjusted schedules under] 2-18-311 through  
16 2-18-315 until the bargaining unit of which he is a member  
17 ratifies a completely integrated collective bargaining  
18 agreement covering the biennium ending June 30, 1983.

19 (ii) In the event that negotiation and ratification of  
20 a completely integrated collective bargaining agreement as  
21 required by subsection (4)(a)(i) of this section are not  
22 completed by July 1, 1981, retroactivity to that date may be  
23 negotiated.

24 (iii) In the event that negotiation and ratification of  
25 a completely integrated collective bargaining agreement as

1 required by subsection (4)(a)(i) of this section are not  
2 completed by July 1, 1981, members of the bargaining unit  
3 involved will continue to receive the compensation they were  
4 receiving as of June 30, 1981.

5 (b) Methods of administration not inconsistent with  
6 the purpose of this part and necessary to properly implement  
7 the pay schedules provided in [the adjusted schedules under]  
8 2-18-313 through 2-18-315 may be provided for in collective  
9 bargaining agreements.

10 (5) The current wage or salary of an employee shall  
11 not be reduced by the implementation of the pay schedules  
12 provided for in [the adjusted schedules under] 2-18-311  
13 through 2-18-315.

14 (6) The department may authorize a separate pay  
15 schedule for medical doctors if the rates provided in [the  
16 adjusted schedules under] 2-18-311 and 2-18-312 are not  
17 sufficient to attract and retain fully licensed and  
18 qualified physicians at the state institutions and the  
19 Montana state prison.

20 (7) The department may develop programs which will  
21 enable the department to mitigate problems associated with  
22 difficult recruitment, retention, transfer, or other  
23 exceptional circumstances. Insofar as the program may apply  
24 to employees within a collective bargaining unit, it shall  
25 be a negotiable subject under 39-31-305."

1 Section 4. Section 7-4-2913, MCA, is amended to read:  
2 "7-4-2913. Payment of costs of inquest. Whenever an  
3 inquest is held because of the death of an individual  
4 confined in the state prison, the county clerk of the county  
5 where the inquest is held shall make out a statement of all  
6 the costs incurred by the county in the inquest, properly  
7 certified by the coroner of the county. This statement shall  
8 be sent to the ~~department--of--institutions~~ warden of the  
9 Montana state prison for approval, and after approval, the  
10 ~~department warden~~ shall pay the costs out of the money  
11 appropriated for the support of the state prison to the  
12 county treasurer of the county where the inquest was held."

13 Section 5. Section 7-6-2427, MCA, is amended to read:  
14 "7-6-2427. Special provisions for certain charges  
15 related to criminal prosecutions. (1) Notwithstanding  
16 7-6-2426, all costs of a criminal prosecution, including  
17 attorneys' fees, of an offense committed in the state prison  
18 are not charges against the county in which the state prison  
19 is located. Such costs shall be paid by the ~~department-of~~  
20 institutions warden of the Montana state prison.

21 (2) When a criminal action is removed before trial,  
22 the costs accruing upon such removal and trial must be a  
23 charge against the county in which the indictment was found  
24 or information filed."

25 Section 6. Section 18-2-301, MCA, is amended to read:

1 "18-2-301. Bids required -- advertising. (1) It is  
 2 unlawful for the board of examiners or any offices,  
 3 departments, institutions, or any agent of the state of  
 4 Montana acting for or in behalf of the state to do, to cause  
 5 to be done, or to let any contract for the construction of  
 6 buildings or the alteration and improvement of buildings and  
 7 adjacent grounds on behalf of and for the benefit of the  
 8 state when the amount involved is \$25,000 or more without  
 9 first advertising in at least one issue each week for 3  
 10 consecutive weeks in two newspapers published in the state,  
 11 one of which must be published at the seat of government and  
 12 the other in the county where the work is to be performed,  
 13 calling for sealed bids to perform such work and stating the  
 14 time and place bids will be considered.

15 (2) All such work may be done, caused to be done, or  
 16 contracted for only after competitive bidding.

17 (3) If no bid for such work is accepted, the work may  
 18 not be done or accomplished. The work may be readvertised  
 19 from time to time until awarded to a qualified competitive  
 20 bidder.

21 (4) This section does not apply to work done by  
 22 inmates at the Montana state prison or at an institution in  
 23 the department of institutions."

24 Section 7. Section 18-4-104, MCA, is amended to read:

25 "18-4-104. Purchases exempt from general requirements.

1 (1) Fresh fruits and vegetables (other than potatoes) shall  
 2 not be included in the supplies to be purchased as provided  
 3 in this chapter. The department may allow a state agency or  
 4 institution to purchase fresh fruits and vegetables. An  
 5 itemized account shall be kept of these purchases and the  
 6 account shall be furnished to the department.

7 (2) Likewise, when immediate delivery of articles or  
 8 performance of service is required by the public exigencies,  
 9 the articles or service so required may be procured by open  
 10 purchase or contract at the place and in the manner in which  
 11 the articles are usually bought and sold or the services  
 12 engaged between individuals but under the direction of the  
 13 department.

14 (3) The department of administration may exempt the  
 15 department of institutions and the Montana state prison from  
 16 the provisions of part 2 of this chapter for the purchase of  
 17 suitable clothing by the department of institutions for  
 18 residents of its institutions and community-based programs  
 19 and by the Montana state prison for its inmates.

20 (4) As used in this section, "suitable clothing" means  
 21 styled, seasonable clothing, which will allow the resident  
 22 to make a normal appearance in the community."

23 Section 8. Section 41-5-206, MCA, is amended to read:

24 "41-5-206. Transfer to criminal court. (1) After a  
 25 petition has been filed alleging delinquency, the court may,

1 upon motion of the county attorney, before hearing the  
2 petition on its merits, transfer the matter of prosecution  
3 to the district court if:

4 (a) the youth charged was 16 years of age or more at  
5 the time of the conduct alleged to be unlawful and the  
6 unlawful act is one or more of the following:

- 7 (i) criminal homicide as defined in 45-5-101;
- 8 (ii) arson as defined in 45-6-103;
- 9 (iii) aggravated assault as defined in 45-5-202;
- 10 (iv) robbery as defined in 45-5-401;
- 11 (v) burglary or aggravated burglary as defined in  
12 45-6-204;
- 13 (vi) sexual intercourse without consent as defined in  
14 45-5-503;
- 15 (vii) aggravated kidnapping as defined in 45-5-303;
- 16 (viii) possession of explosives as defined in 45-8-335;
- 17 (ix) criminal sale of dangerous drugs for profit as  
18 included in 45-9-101;
- 19 (x) attempt as defined in 45-4-103 of any of the acts  
20 enumerated in subsections (1)(a)(i) through (1)(a)(ix);
- 21 (b) a hearing on whether the transfer should be made  
22 is held in conformity with the rules on a hearing on a  
23 petition alleging delinquency, except that the hearing will  
24 be to the youth court without a jury;
- 25 (c) notice in writing of the time, place, and purpose

1 of the hearing is given to the youth, his counsel, and his  
2 parents, guardian, or custodian at least 10 days before the  
3 hearing; and

4 (d) the court finds upon the hearing of all relevant  
5 evidence that there are reasonable grounds to believe that:

- 6 (i) the youth committed the delinquent act alleged;
- 7 (ii) the seriousness of the offense and the protection  
8 of the community require treatment of the youth beyond that  
9 afforded by juvenile facilities; and
- 10 (iii) the alleged offense was committed in an  
11 aggressive, violent, or premeditated manner.

12 (2) In transferring the matter of prosecution to the  
13 district court, the court may also consider the following  
14 factors:

- 15 (a) the sophistication and maturity of the youth,  
16 determined by consideration of his home, environmental  
17 situation, and emotional attitude and pattern of living;
- 18 (b) the record and previous history of the youth,  
19 including previous contacts with the youth court, law  
20 enforcement agencies, youth courts in other jurisdictions,  
21 prior periods of probation, and prior commitments to  
22 juvenile institutions. However, lack of a prior juvenile  
23 history with youth courts will not of itself be grounds for  
24 denying the transfer.
- 25 (c) the severity of the offense;

(d) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services, and facilities currently available to the youth court.

(3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.

(4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth may be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(6) Any offense not enumerated in subsection (1)(a) that arises during the commission of a crime enumerated in subsection (1)(a) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1)(a), upon motion of the county attorney and acceptance by the district court judge.

(7) If a youth is found guilty in district court of

any of the offenses enumerated in subsection (1)(a) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall either confine the youth in whatever institution it considers proper or send the youth to the Montana state prison."

Section 9. Section 44-5-202, MCA, is amended to read:

"44-5-202. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5) ~~(6)~~, collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

~~(b) the Montana state prison;~~

~~(b)(c)~~ the department of institutions; and

~~(c)(d)~~ the department of justice.

~~(2) The warden of the Montana state prison may photograph and fingerprint anyone who is an inmate of the prison.~~

~~(2)(3)~~ The department of institutions may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

~~(3)(4)~~ A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person

1 who has been arrested or noticed or summoned to appear to  
2 answer an information or indictment if:

- 3 (a) the charge is the commission of a felony;
- 4 (b) the identification of an accused is in issue; or
- 5 (c) it is required to do so by court order.

6 ~~(4)~~(5) Whenever a person charged with the commission  
7 of a felony is not arrested, he shall submit himself to the  
8 sheriff, chief of police, or other concerned law enforcement  
9 officer for fingerprinting at the time of his initial  
10 appearance in court to answer the information or indictment  
11 against him.

12 ~~(5)~~(6) A criminal justice agency described in  
13 subsection (1)(a) may photograph and fingerprint an accused  
14 if he has been arrested for the commission of a misdemeanor,  
15 except that an individual arrested for a traffic,  
16 regulatory, or fish and game offense may not be photographed  
17 or fingerprinted unless he is incarcerated.

18 ~~(6)~~(7) Within 10 days the originating agency shall  
19 send the state repository a copy of each fingerprint taken  
20 on a completed form provided by the state repository.

21 ~~(7)~~(8) The state repository shall compare the  
22 fingerprints received with those already on file in the  
23 state repository. If it is determined that the individual is  
24 wanted or is a fugitive from justice, the state repository  
25 shall at once inform the originating agency. If it is

1 determined that the individual has a criminal record, the  
2 state repository shall send the originating agency a copy of  
3 the individual's complete criminal history record.

4 ~~(8)~~(9) Photographs and fingerprints taken shall be  
5 returned by the state repository to the originating agency,  
6 which shall return all copies to the individual from whom  
7 they were taken:

- 8 (a) if a court so orders; or
- 9 (b) upon the request of the individual:
  - 10 (i) if no charges were filed;
  - 11 (ii) if a misdemeanor charge did not result in a
  - 12 conviction; or
  - 13 (iii) if the individual was found innocent of the
  - 14 offense charged."

15 Section 10. Section 44-5-213, MCA, is amended to read:

16 "44-5-213. Procedures to ensure accuracy of criminal  
17 history records. In order to ensure complete and accurate  
18 criminal history record information:

19 (1) the department of justice shall maintain a  
20 centralized state repository of criminal history record  
21 information to serve all criminal justice agencies in the  
22 state;

23 (2) dispositions resulting from formal proceedings in  
24 a court having jurisdiction in a criminal action against an  
25 individual who has been photographed and fingerprinted under

1 44-5-202 shall be reported to the originating agency and the  
 2 state repository within 15 days. If the dispositions can  
 3 readily be collected and reported through the court system,  
 4 the dispositions may be submitted to the state repository by  
 5 the administrative office of the courts.

6 (3) an originating agency shall advise the state  
 7 repository within 30 days of all dispositions concerning the  
 8 termination of criminal proceedings against an individual  
 9 who has been photographed and fingerprinted under 44-5-202;

10 (4) ~~the Montana state prison~~ and the department of  
 11 institutions shall advise the state repository within 30  
 12 days of all dispositions subsequent to conviction of an  
 13 individual who has been photographed and fingerprinted under  
 14 44-5-202;

15 (5) each criminal justice agency shall query the state  
 16 repository prior to dissemination of any criminal history  
 17 record information to ensure the timeliness of the  
 18 information. When no final disposition is shown by the state  
 19 repository records, the state repository shall query the  
 20 source of the document or other appropriate source for  
 21 current status. Inquiries shall be made prior to any  
 22 dissemination except in those cases in which time is of the  
 23 essence and the repository is technically incapable of  
 24 responding within the necessary time period. If time is of  
 25 the essence, the inquiry shall still be made and the

1 response shall be forwarded as soon as it is received.

2 (6) each criminal justice agency shall ensure that all  
 3 its criminal justice information is complete, accurate, and  
 4 current; and

5 (7) the department of justice shall adopt rules for  
 6 criminal justice agencies other than those that are part of  
 7 the judicial branch of government to implement this section.  
 8 The department of justice may adopt rules for the same  
 9 purpose for the judicial branch of government if the supreme  
 10 court consents to the rules."

11 Section 11. Section 46-19-303, MCA, is amended to  
 12 read:

13 "46-19-303. Power of governor to enter into contracts.  
 14 The governor is hereby empowered to designate ~~the warden of~~  
 15 ~~the Montana state prison or~~ the department of institutions  
 16 to enter into such contracts recommended by the ~~warden or by~~  
 17 ~~the~~ department on behalf of this state as may be appropriate  
 18 to implement the participation of this state in the Western  
 19 Interstate Corrections Compact pursuant to 46-19-301."

20 Section 12. Section 46-19-305, MCA, is amended to  
 21 read:

22 "46-19-305. Hearings requested by other states. The  
 23 board of pardons, ~~the warden of the Montana state prison,~~  
 24 and the department of institutions shall hold such hearings  
 25 as may be requested by any other party state pursuant to



Article IV(6) of the Western Interstate Corrections Compact."

Section 13. Section 50-3-102, MCA, is amended to read:

"50-3-102. Powers and duties of state fire marshal.

(1) For the purpose of reducing the state's fire loss, the state fire marshal shall:

(a) make at least one inspection a year of each state institution ~~in the department of institutions~~ and submit a copy of the report to the department of institutions with recommendations in regard to fire prevention, fire protection, and public safety;

~~(b) make at least one inspection a year of the Montana state prison and submit a copy of the report to the warden of the Montana state prison with recommendations in regard to fire prevention, fire protection, and public safety;~~

(b)(1) make at least one inspection a year of each unit of the Montana university system and submit a copy of the report to the commissioner of higher education with recommendations in regard to fire prevention, fire protection, and public safety;

(c)(1) inspect public, business, or industrial buildings and require conformance to law and rules promulgated under the provisions of this chapter;

(d)(1) assist local fire and law enforcement authorities in arson investigations and supervise such

investigations when, in his judgment, supervision is necessary;

(e)(1) review all training programs on investigation of accidental and incendiary fires;

(f)(1) provide fire prevention and fire protection information to public officials and the general public;

(g)(1) encourage and assist local fire authorities in fire prevention programs and adopt standards and implement a program to encourage fire departments to meet such standards;

(h)(1) be the state entity primarily responsible for promoting fire safety at the state level and to represent the state in structural fire matters;

(i)(1) encourage coordination of all services and agencies in structural fire matters to reduce duplication and fill voids in services;

(j)(1) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices;

(k)(1) keep in his office a record of all fires occurring in the state, the origin of the fires, and all facts, statistics, and circumstances relating thereto which have been determined by investigations under the provisions of chapter 63 of this title; and, except for statements of witnesses given during an investigation and information that

1 may be held in confidence under 50-63-403, the record shall  
2 be open at all times to public inspection; and

3 ~~+++101~~ make an annual report to the attorney general  
4 containing a detailed statement of his official action and  
5 the transactions of his department, and the attorney general  
6 shall, in turn, submit the report to the governor with such  
7 recommendations and comments thereon as he considers  
8 necessary.

9 (2) The state fire marshal may:

10 (a) adopt rules necessary for safeguarding life and  
11 property from the hazards of fire and explosion and carrying  
12 into effect the fire prevention laws of this state; and

13 (b) if necessary to safeguard life and property under  
14 rules promulgated pursuant to this section, maintain an  
15 action to enjoin the use of all or a portion of a building  
16 or restrain a specific activity until there is compliance  
17 with the rules."

18 Section 14. Section 50-21-103, MCA, is amended to  
19 read:

20 "50-21-103. Limitations on right to perform autopsy or  
21 dissection. The right to perform an autopsy, dissect a human  
22 body, or make any post-mortem examination involving  
23 dissection of any part of a body is limited to cases where:

24 (1) specifically authorized by law;

25 (2) a coroner is authorized to hold an inquest and

1 then only to the extent that the coroner may authorize  
2 dissection or autopsy;

3 (3) authorized by a written statement of the deceased,  
4 whether the statement is of a testamentary character or  
5 otherwise;

6 (4) authorized by the husband, wife, or next of kin  
7 responsible by law for burial to determine the cause of  
8 death and then only to the extent so authorized;

9 (5) the decedent died in a hospital operated by the  
10 United States veterans administration, ~~the Montana school~~  
11 ~~for the deaf and blind, the Montana state prison,~~ or an  
12 institution in the department of institutions leaving no  
13 surviving husband, wife, or next of kin responsible by law  
14 for burial and the manager or superintendent of the hospital  
15 or institution where death occurred obtains authority on  
16 order of the district court to determine the cause of death  
17 and then only to the extent authorized by court order;

18 (6) the decedent died in the state, was a resident,  
19 but left no surviving husband, wife, or next of kin charged  
20 by law with the duty of burial and the attending physician  
21 obtains authority on order of the district court for the  
22 purpose of ascertaining the cause of death and then only to  
23 the extent authorized by court order after it has been shown  
24 that the physician made diligent search for the next of kin  
25 responsible by law for burial."

Section 15. Section 53-1-202, MCA, is amended to read:

"53-1-202. Institutions in department. (1) The following institutions are in the department:

(a) Galen state hospital;

(b) Montana veterans' home;

~~(c) State prison;~~

~~(d) (c)~~ Mountain View school;

~~(e) (d)~~ Pine Hills school;

~~(f) (e)~~ Boulder River school and hospital;

~~(g) (f)~~ Warm Springs state hospital;

~~(h) (g)~~ Montana center for the aged;

~~(i) (h)~~ Swan River youth forest camp;

~~(j) (i)~~ Eastmont training center;

~~(k) (j)~~ Any other institution which provides care and services for juvenile delinquents, including but not limited to youth forest camps and juvenile reception and evaluation centers.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature."

Section 16. Section 53-1-204, MCA, is amended to read:

"53-1-204. Responsibility of ~~warden-----and~~ superintendents of institutions. The ~~warden-----or~~ superintendents of institutions in the department are responsible for the immediate management and control of

their respective institutions, subject to the general policies and programs established by the department."

Section 17. Section 53-1-206, MCA, is amended to read:

"53-1-206. Participation by institutions ~~and prison~~ in research programs. The department may ~~direct require that~~ a penal and corrective institution ~~of--the-state-to in the department and the warden may elect to have the Montana state prison~~ participate in and cooperate with programs of research and development being conducted and carried on by any units of the Montana university system, by any of the other educational institutions of the state of Montana, or by any foundation or agency thereof in the fields of science, health, education, and natural resources. These programs may include the voluntary participation of the inmates of the institution ~~or prison~~ in testing and experimental work conducted as a part thereof. Any funds received from the authorized programs may be shared with the participating inmates or otherwise held and used for the welfare and rehabilitation thereof and may not become a part of the regular budgeted operation of the institution ~~or prison~~."

Section 18. Section 53-1-301, MCA, is amended to read:

"53-1-301. Permitted institutional ~~and prison~~ industries ~~--powers--of--department--and --~~ incentive pay to inmates. The ~~Both the department and the warden of the~~

1 Montana state prison may:

2 (1) establish industries in facilities under their  
3 jurisdiction, including institutions under the department of  
4 institutions and the Montana state prison, which will result  
5 in the production or manufacture of such products and the  
6 rendering of such services as may be needed by any  
7 department or agency of the state or any political  
8 subdivision thereof, by any agency of the federal  
9 government, by any other states or their political  
10 subdivisions, or by nonprofit organizations and that will  
11 assist in the rehabilitation of residents in institutions  
12 such facilities;

13 (2) contract with private industry for the sale of  
14 goods or components manufactured or produced in shops under  
15 its jurisdiction;

16 (3) print catalogs describing goods manufactured or  
17 produced by institutions a facility and distribute the  
18 catalogs;

19 (4) fix the sale price for goods produced or  
20 manufactured at institutions a facility. Prices shall not  
21 exceed prices existing in the open market for goods of  
22 comparable quality.

23 (5) require institutions a facility under their  
24 jurisdiction to purchase needed goods from other  
25 institutions facilities;

1 (6) provide for the repair and maintenance of property  
2 and equipment of institutions a facility by residents of  
3 institutions facilities;

4 (7) provide for construction projects up to the  
5 aggregate sum of \$25,000 per project, by residents of  
6 institutions facilities; provided, however, said  
7 construction work is not covered by a collective bargaining  
8 agreement;

9 (8) provide for the repair and maintenance at an  
10 institution a facility of furniture and equipment of any  
11 state agency;

12 (9) provide for the manufacture at an-institution a  
13 facility of motor vehicle license plates and other related  
14 articles;

15 (10) with the approval of the warden or department,  
16 sell manufactured or agricultural products and livestock on  
17 the open market;

18 (11) provide for the manufacture at an-institution a  
19 facility of highway, road, and street marking signs for the  
20 use of the state or any of its political subdivisions,  
21 except when the manufacture of the signs is in violation of  
22 a collective bargaining contract;

23 (12) (a) pay an inmate or resident of an-institution a  
24 facility from receipts from the sale of products produced or  
25 manufactured or services rendered in a program in which he

1 is working.

2 (b) Payment for the performance of work may be based  
3 on the following criteria:

- 4 (i) knowledge and skill;
- 5 (ii) attitude toward authority;
- 6 (iii) physical effort;
- 7 (iv) responsibility for equipment and materials;
- 8 (v) regard for safety of others.

9 (c) The maximum rate of pay shall be determined by the  
10 appropriation established for each program."

11 Section 19. Section 53-1-302, MCA, is amended to read:

12 "53-1-302. Disposition of receipts from sale of goods.  
13 Receipts from the sale of goods produced or manufactured by  
14 ~~the Montana state prison or by~~ an institution ~~in the~~  
15 ~~department of institutions~~ shall be deposited in the  
16 revolving fund account for the use of the industries program  
17 of the ~~prison or~~ institution. At the end of each biennium,  
18 all unobligated revolving funds over a \$50,000 ending-fund  
19 balance, except for those funds reserved for equipment  
20 replacement as determined by an equipment replacement  
21 schedule, shall revert to the state general fund account."

22 Section 20. Section 53-1-303, MCA, is amended to read:

23 "53-1-303. Prohibited acts. Unless permitted by the  
24 department ~~or the warden of the Montana state prison,~~  
25 arranging for the labor of a resident of an institution in

1 ~~the department of institutions or inmate of the prison is~~  
2 ~~prohibited."~~

3 Section 21. Section 53-1-304, MCA, is amended to read:

4 "53-1-304. Supervision of industries program. The  
5 ~~Except for the industries program operated by the Montana~~  
6 ~~state prison, the~~ industries program shall be supervised by  
7 the director of the department of institutions or his  
8 designated representative, provided the administration of  
9 the industries program is separate from the administration  
10 of any institution where the program may be located."

11 Section 22. Section 53-30-105, MCA, is amended to  
12 read:

13 "53-30-105. Good time allowance. (1) The ~~department of~~  
14 ~~institutions warden of the Montana state prison~~ shall adopt  
15 rules providing for the granting of good time allowance for  
16 inmates employed in any prison work or activity. The good  
17 time allowance shall operate as a credit on his sentence as  
18 imposed by the court, conditioned upon the inmate's good  
19 behavior and compliance with the rules made by the  
20 ~~department--or~~ the warden. The rules adopted by the  
21 department ~~warden~~ may not grant good time allowance to  
22 exceed:

23 (a) 10 days per month for inmates assigned to maximum,  
24 close, and medium I security classifications;

25 (b) 13 days per month for those classified as medium

1 II and minimum security classifications;

2 (c) 15 days per month for inmates after having been  
3 assigned as medium II or minimum security for an  
4 uninterrupted period of 1 year;

5 (d) 13 days per month for those inmates enrolled in  
6 school who successfully complete the course of study or who  
7 while so enrolled are released from prison by discharge or  
8 parole;

9 (e) 3 days per month for those inmates participating  
10 in self-improvement activities designated by the department.

11 (2) In the event of an attempted escape by an inmate  
12 or a violation of the rules prescribed by the ~~department or~~  
13 ~~warden~~, the inmate may be punished by the forfeiture of part  
14 or all good time allowances. ~~The warden of the state prison~~  
15 ~~shall advise the department of any attempted escape or~~  
16 ~~violation of rules on the part of the inmate. Any punishment~~  
17 ~~by forfeiture of good time allowance must be approved by the~~  
18 ~~department.~~

19 (3) A person may not earn good time under this section  
20 while he is on probation or parole."

21 Section 23. Section 53-30-106, MCA, is amended to  
22 read:

23 "53-30-106. Contracts for confinement of inmates in  
24 other institutions. (1) When the state prison is inadequate  
25 to contain an inmate sentenced to confinement there, the

1 ~~department of institutions warden of the Montana state~~  
2 ~~prison~~ may enter into contracts with the federal government,  
3 other states, or the commissioners of counties that have  
4 suitable jails for confining inmates sentenced to the state  
5 prison.

6 (2) Within budgetary limits, the department ~~warden~~ may  
7 also enter into contracts with public or private  
8 corporations for the confinement of selected inmates where  
9 suitable programs have been established."

10 Section 24. Section 53-30-107, MCA, is amended to  
11 read:

12 "53-30-107. Establishment of intensive rehabilitation  
13 center authorized. Within the budgetary limits provided by  
14 law, the ~~department of institutions warden of the Montana~~  
15 ~~state prison~~ may establish on property owned by the state on  
16 which prison facilities are or may be located a prison  
17 facility designed to segregate certain types of prisoners."

18 Section 25. Section 53-30-109, MCA, is amended to  
19 read:

20 "53-30-109. Management and control of intensive  
21 rehabilitation center. The warden of the Montana state  
22 ~~prison, subject to the supervision and control of the~~  
23 ~~department of institutions,~~ shall operate and manage such  
24 intensive rehabilitation center and shall make such rules  
25 for the operation, management, and admission to such center

1 as may from time to time be necessary and desirable."

2 Section 26. Section 53-30-110, MCA, is amended to  
3 read:

4 "53-30-110. Expense of trial for offenses committed in  
5 prison. Whenever a trial of any person takes place under any  
6 of the provisions of 45-7-306 and whenever a prisoner in the  
7 state prison is tried for any crime committed therein, the  
8 county clerk of the county where such trial is held shall  
9 make out a statement of all the costs incurred by the county  
10 for the trial of such case and of guarding and keeping such  
11 prisoner, properly certified by a district judge of said  
12 county, which statement shall be sent to the department-of  
13 institutions warden of the Montana state prison for ~~his~~ his  
14 approval. After such approval, the department warden must  
15 cause the amount of such costs to be paid out of the money  
16 appropriated for the support of the state prison to the  
17 county treasurer of the county where such trial was held."

18 Section 27. Section 53-30-111, MCA, is amended to  
19 read:

20 "53-30-111. Clothing and money furnished on discharge  
21 or parole. The state prison shall furnish suitable clothing  
22 to a discharged or paroled inmate. An inmate discharged and  
23 delivered to the custody of the federal government or  
24 another state shall receive \$5; all other discharged or  
25 paroled inmates may receive "gate money" in an amount up to

1 \$100. The department-of-institutions warden of the Montana  
2 state prison may establish rules which allow ~~it~~ him to  
3 deduct up to one-fourth of an inmate's wages earned under  
4 53-1-301 and hold that money in a special account to be  
5 disbursed to the inmate when he is discharged or paroled.  
6 This amount shall be in addition to the "gate money".

7 Section 28. Section 53-30-131, MCA, is amended to  
8 read:

9 "53-30-131. Prison industries training program --  
10 purpose and scope. (1) In addition to any institutional  
11 industry operated at the Montana state prison under Title  
12 53, chapter 1, part 3, the department-of-institutions warden  
13 shall conduct a prison industries training program.

14 (2) The purpose of the prison industries training  
15 program is to:

16 (a) provide innovative and progressive inmate  
17 reformation and rehabilitation possibilities by exposing  
18 inmates to worthwhile training;

19 (b) prepare inmates for release by providing  
20 industries at the prison that utilize their skills, thus  
21 providing experience beyond mere training, inculcating  
22 inmates with good production and work habits, and providing  
23 them with a means to earn money that will be available to  
24 them upon release.

25 (3) The prison industries training program consists of

1 vocational training, on-the-job training, and production  
2 experience. The department warden may contract with public  
3 and private vocational education entities to provide this  
4 training.

5 (4) The program may provide training and experience  
6 involving cultivation, production, repair, construction,  
7 refurbishment, service, and related processes involving  
8 personal property, including but not limited to such items  
9 as crops, livestock, furniture, office and electrical  
10 equipment, and motor vehicles. Such products and services,  
11 with the exception of livestock and agricultural products  
12 produced from the Montana state prison ranch, may be  
13 provided only to state agencies, local government units,  
14 school districts, authorities, and other governmental  
15 entities."

16 Section 29. Section 53-30-132, MCA, is amended to  
17 read:

18 "53-30-132. Inmate participation and status -- prison  
19 industries training program. (1) An inmate participating in  
20 the prison industries training program may be granted a good  
21 time allowance, not to exceed 15 days per month,  
22 notwithstanding the limits contained in 53-30-105, for  
23 outstanding participation in the program as defined by rules  
24 adopted by the department--of--institutions warden\_of\_the  
25 Montana-state-prison. Such good time allowance has the same

1 effect as a good time allowance granted under 53-30-105, and  
2 the provisions of subsections (2) and (3) of 53-30-105 apply  
3 to such good time allowance. However, no inmate may receive  
4 good time for participation in this program under any other  
5 section or rule which would duplicate the good time  
6 authorized herein.

7 (2) While engaged in on-the-job training and  
8 production, inmates may be paid a wage commensurate with  
9 their production function. Such wages shall be established  
10 at a rate that encourages efficient production and effective  
11 levels of inmate participation.

12 (3) Inmates working in the prison industries training  
13 program are not employees, either public or private, and  
14 employment rights accorded other classes of workers do not  
15 apply to such inmates.

16 (4) Able-bodied persons committed to the Montana state  
17 prison as adult offenders shall be required to perform work  
18 as provided for by the department-of--institutions warden."

19 Section 30. Section 53-30-133, MCA, is amended to  
20 read:

21 "53-30-133. Administration of prison industries  
22 training program. (1) (a) The prison industries training  
23 program need not be a self-supporting program. The  
24 department--of--institutions warden\_of\_the\_Montana-state  
25 prison may enter into contracts and establish prices for



1 products or services produced by this program. Within  
2 budgetary restrictions, the department ~~warden~~ shall  
3 establish prices that tend to maximize the amount of work  
4 available for inmates. All revenue raised through the  
5 program may be used only for the program.

6 (b) State agencies, local governments, school  
7 districts, authorities, and other local government entities  
8 are encouraged to explore the possibilities of using the  
9 prison industries training program. State agencies shall  
10 cooperate with the department--of--institutions ~~warden~~ in  
11 notifying governmental entities within the state of the  
12 program and of the services and products that are available.

13 (2) (a) The department--of--institutions ~~warden~~ shall  
14 adopt rules implementing this program and shall report to  
15 the legislature its ~~his~~ continuing plans and recommendations  
16 in implementing this program. Any price lists established by  
17 the department ~~warden~~ are exempt from the provisions of  
18 Title 2, chapter 4 (the Montana Administrative Procedure  
19 Act), but the department ~~warden~~ may, if ~~it~~ ~~he~~ considers it  
20 an effective method of dissemination, publish such price  
21 lists in the Montana Administrative Register or the  
22 Administrative Rules of Montana, or both.

23 (b) The department-of-institutions ~~prison industries~~  
24 ~~training program~~ is subject to program audits of-the-prison  
25 industries-training-program by the legislative auditor."

1 Section 31. Section 53-30-141, MCA, is amended to  
2 read:

3 "53-30-141. Extension of limits of confinement. (1)  
4 The department-of-institutions ~~warden of the Montana state~~  
5 ~~prison~~ may extend the limits of confinement of the Montana  
6 state prison for purposes of housing outside the prison  
7 fence inmates who:

8 (a) are employed in ranch or agricultural industry  
9 programs; and

10 (b) have demonstrated sufficient reliability and  
11 trustworthiness.

12 (2) Housing units outside the confines of the prison  
13 fence may be created by renovation of existing buildings or  
14 by the erection of modular-type units and associated  
15 facilities on the prison ranch.

16 (3) For the purpose of expediting the acquisition and  
17 construction of housing units authorized in subsection 2 the  
18 department of administration may exempt the project from  
19 provisions of Montana law relating to the employment of  
20 architects, advertising, labor, and wages. The department of  
21 administration need not comply with any state bidding  
22 requirements that would preclude a sole source purchase."

23 Section 32. Section 53-30-142, MCA, is amended to  
24 read:

25 "53-30-142. Escape from extended confinement.

Purposeful or knowing failure of an inmate to remain within the extended limits of his confinement or to return within the time prescribed by prison officials to the place of confinement designated by the department warden of the Montana state prison is an escape punishable as provided in 45-7-306."

Section 33. Section 53-30-212, MCA, is amended to read:

"53-30-212. Commutation of sentence to state prison and transfer of prisoner to juvenile correctional facility.

(1) Upon the application of a person under 21 years of age who has been sentenced to the state prison or upon the application of his parents or guardian, the governor may, after consulting with the warden of the Montana state prison and the department of institutions and with the approval of the board of pardons, commute the sentence by committing such person to the department until he is 21 years of age or until sooner placed or discharged.

(2) If such person's behavior after being committed to the department indicates that he is not a proper person to reside at one of the department's juvenile facilities, the governor, after consulting with the warden and the department and with the approval of the board of pardons, may revoke the commutation and return him to the state prison to serve out his unexpired term, and the time spent

by him at one of the department's juvenile facilities or while a refugee from one of the department's juvenile facilities shall not be considered as a part of his original sentence.

(3) Upon recommendation of the warden and with the approval of the department, a person under 21 years of age who has been sentenced to the state prison may be transferred to any juvenile facility under the jurisdiction and control of the department.

(4) Upon recommendation of the warden and approval of a person sentenced to the state prison or application of a person sentenced to the state prison and approval of the warden and with the approval of the department, such person sentenced to the state prison who is 25 years of age or younger may be transferred to the Swan River youth forest camp. Upon such transfer such person shall be under the supervision and control of the facility to which he is transferred.

(5) If such person's behavior after transfer to such juvenile facility indicates he might be released on parole or his sentence be commuted and he be discharged from custody, the superintendent of such facility, with the approval of the department, may make an appropriate recommendation to the state board of pardons and the governor, who may, in their discretion, parole such person

1 or commute his sentence.

2 (6) If such person's behavior after transfer to a  
3 juvenile facility indicates he is not a proper person to  
4 reside in such facility, upon recommendation of the  
5 superintendent and with the approval of the department and  
6 the warden, such person shall be returned to the state  
7 prison to serve out his unexpired term."

8 Section 34. Section 87-1-226, MCA, is amended to read:

9 "87-1-226. Disposition of meat of animals damaging  
10 property. The meat of all animals killed or destroyed  
11 pursuant to 87-1-225 by the department or the authorized  
12 landholder shall be conserved and given to ~~the Montana state~~  
13 ~~prison~~, state institutions, school lunch programs, or the  
14 department of social and rehabilitation services. The  
15 department shall provide transportation and distribution of  
16 the meat."

17 Section 35. Section 87-1-512, MCA, is amended to read:

18 "87-1-512. Certificate of sale. Upon the sale of  
19 property as provided in 87-1-511, the officer shall issue a  
20 certificate to the purchasing party, certifying that the  
21 purchaser has the legal right to be in possession of the  
22 property and that anyone so acquiring this property from the  
23 state is prohibited from reselling or using the same for any  
24 commercial purpose. During an auction only one carcass of  
25 either deer, moose, or elk may be purchased per person. At

1 its discretion, the department may donate unsold carcasses  
2 to welfare departments, public institutions, ~~the Montana~~  
3 ~~state prison~~, or charitable institutions."

4 NEW SECTION. Section 36. Codification instruction.  
5 Section 1 is intended to be codified as an integral part of  
6 Title 2, chapter 15, part 10, and the provisions of Title 2,  
7 chapter 15, apply to section 1.

8 NEW SECTION. Section 37. Effective date. This act is  
9 effective July 1, 1983.

-End-

SENATE BILL NO. 390

INTRODUCED BY BOYLAN, DANIELS, GRAHAM, E. SMITH,  
TVEIT, CONOVER, LYNCH, THOFT, ELLERD, BRAND

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE MONTANA  
STATE PRISON FROM CONTROL OF THE DEPARTMENT OF INSTITUTIONS  
AND ATTACHING IT TO THE DEPARTMENT OF ADMINISTRATION FOR  
ADMINISTRATIVE PURPOSES ONLY; PROVIDING THAT THE WARDEN OF  
THE PRISON IS TO BE APPOINTED BY THE GOVERNOR AND TO REPORT  
DIRECTLY TO THE GOVERNOR; ESTABLISHING THE POWERS AND DUTIES  
OF THE WARDEN; PROVIDING FOR THE REALLOCATION OF VARIOUS  
INTERNAL PRISON FUNCTIONS TO THE PRISON FROM THE DEPARTMENT  
OF INSTITUTIONS; AMENDING SECTIONS 2-18-303, 7-4-2913,  
7-6-2427, 18-2-301, 18-4-104, 41-5-206, 44-5-202, 44-5-213,  
46-19-303, 46-19-305, 50-3-102, 50-21-103, 53-1-202,  
53-1-204, 53-1-206, 53-1-301 THROUGH 53-1-304, 53-30-102,  
53-30-105 THROUGH 53-30-107, 53-30-109 THROUGH 53-30-111,  
53-30-131 THROUGH 53-30-133, 53-30-141, 53-30-142,  
53-30-212, 87-1-226, AND 87-1-512, MCA; AND PROVIDING AN  
EFFECTIVE DATE."

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

~~NEW SECTION~~ Section 1. Montana state prison --  
warden -- allocation. (1) There is a Montana state prison.  
(2) The head of the Montana state prison is the

THIRD READING

There are no changes in SB 390 second reading  
(yellow) amended. Please refer to it for complete  
text.

SB 390

## 1 SENATE BILL NO. 390

2 INTRODUCED BY BOYLAN, DANIELS, GRAHAM, E. SMITH,

3 TVEIT, CONOVER, LYNCH, THOFT, ELLERD, BRAND

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE MONTANA  
6 STATE PRISON FROM CONTROL OF THE DEPARTMENT OF INSTITUTIONS  
7 AND ATTACHING IT TO THE DEPARTMENT OF ADMINISTRATION FOR  
8 ADMINISTRATIVE PURPOSES ONLY; PROVIDING THAT THE WARDEN OF  
9 THE PRISON IS TO BE APPOINTED BY THE GOVERNOR AND TO REPORT  
10 DIRECTLY TO THE GOVERNOR; ESTABLISHING THE POWERS AND DUTIES  
11 OF THE WARDEN; PROVIDING FOR THE REALLOCATION OF VARIOUS  
12 INTERNAL PRISON FUNCTIONS TO THE PRISON FROM THE DEPARTMENT  
13 OF INSTITUTIONS; AMENDING SECTIONS 2-18-303, 7-4-2913,  
14 7-6-2427, 18-2-301, 18-4-104, 41-5-206, 44-5-202, 44-5-213,  
15 46-19-303, 46-19-305, 50-3-102, 50-21-103, 53-1-202,  
16 53-1-204, 53-1-206, 53-1-301 THROUGH 53-1-304, 53-30-102,  
17 53-30-105 THROUGH 53-30-107, 53-30-109 THROUGH 53-30-111,  
18 53-30-131 THROUGH 53-30-133, 53-30-141, 53-30-142,  
19 53-30-212, 57-1-226, AND 87-1-512, MCA; AND PROVIDING AN  
20 EFFECTIVE DATE."

21

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

23 ~~NEW SECTION.~~ Section 1. Montana state prison --

24 warden -- allocation. (1) There is a Montana state prison.

25 (2) The head of the Montana state prison is the

Rereferred to second reading. There  
was no change. Please refer to third  
reading (blue) for complete text.  
(Printed 2/18)

SB 390