

SENATE BILL NO. 57  
INTRODUCED BY HALLIGAN

IN THE SENATE

JANUARY 6, 1987                   INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

JANUARY 14, 1987                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 15, 1987                   PRINTING REPORT.

JANUARY 17, 1987                   SECOND READING, DO PASS.

JANUARY 19, 1987                   ENGROSSING REPORT.

JANUARY 20, 1987                   THIRD READING, PASSED.  
  
TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 4, 1987                   INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

MARCH 4, 1987                    COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

MARCH 6, 1987                    SECOND READING, CONCURRED IN.

MARCH 7, 1987                    THIRD READING, CONCURRED IN.  
AYES, 88; NOES, 1.  
  
RETURNED TO SENATE.

IN THE SENATE

MARCH 9, 1987                    RECEIVED FROM HOUSE.  
  
SENT TO ENROLLING.

1                    SENATE    BILL NO.   57  
2   INTRODUCED BY   HALLIGAN

3  
4   A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE SHERIFF'S  
5   PROCEDURES IN CIVIL MATTERS; CHANGING THE TIME REQUIREMENTS  
6   FOR THE PAYMENT OF FEES INTO THE COUNTY TREASURY; PROVIDING  
7   AN ALTERNATIVE METHOD FOR THE RETURN OF A WRIT OF EXECUTION;  
8   MODIFYING NOTICE REQUIREMENTS FOR THE CONDUCT OF A SHERIFF'S  
9   SALE AND FOR THE ENFORCEMENT OF CERTAIN LIENS; REVISING THE  
10   LAWS RELATING TO THE IMPOUNDMENT AND SALE OF ABANDONED MOTOR  
11   VEHICLES; ALLOWING THE SHERIFF TO REQUIRE SECURITY FOR COSTS  
12   INCURRED IN THE SEIZURE OF PROPERTY UNDER AN ORDER FOR CLAIM  
13   AND DELIVERY; AMENDING SECTIONS    7-4-2511,    7-4-2512,  
14   25-13-404,    25-13-701,    61-12-401 THROUGH    61-12-403,  
15   61-12-407, AND 71-3-1203, MCA; AND PROVIDING AN EFFECTIVE  
16   DATE."  
17

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

19        Section 1. Section 7-4-2511, MCA, is amended to read:  
20        "7-4-2511. Collection and disposal of fees. (1) Each  
21        salaried county officer must charge and collect for the use  
22        of his county and pay into the county treasury ~~on-the--first~~  
23        Monday by the 10th day in each month all fees now or  
24        hereafter allowed by law, paid or chargeable in all cases,  
25        except as provided in 25-10-403. Nothing in this subsection

1   applies to the compensation received by the sheriff as  
2   mileage while in the performance of official duties or for  
3   the board of prisoners or other persons while in his  
4   custody.

5        (2) No salaried county officer may receive for his own  
6        use any fees, penalties, or emoluments of any kind, except  
7        the salary as provided by law, for any official service  
8        rendered by him. Unless otherwise provided, all fees,  
9        penalties, and emoluments of every kind collected by a  
10        salaried county officer are for the sole use of the county  
11        and must be accounted for and paid to the county treasurer  
12        as provided by subsection (1) and credited to the general  
13        fund of the county."

14        Section 2. Section 7-4-2512, MCA, is amended to read:

15        "7-4-2512. Statement and affidavit of fees collected.  
16        (1) The fees and compensation collected and chargeable for  
17        the use of the county in each month must be paid to the  
18        county treasurer ~~on-the-first-Monday by the 10th day~~ of the  
19        following month and must be accompanied by a statement and  
20        copy of the fee book for the preceding month, duly verified  
21        by the officer making the payment.

22        (2) The affidavit must be in the following form:  
23        State of Montana  
24        County of ....  
25        I, ....., of the county of ....., do swear that the fee



-2-    INTRODUCED BILL  
          SB-57

1 book in my office contains a true statement in detail of all  
2 fees and compensations of every kind and nature for official  
3 services rendered by me, paid or chargeable, or by my  
4 deputies or assistants for the month of ...., 19.., and that  
5 this fee book shows the full amount received or chargeable  
6 in said month and since my last monthly payment; and neither  
7 myself nor, to my knowledge or belief, any of my deputies or  
8 assistants have rendered any official service, except for  
9 the county or state, which is not fully set out in this fee  
10 book; and that the foregoing statement is a full, true, and  
11 correct copy thereof.

12 ..... (Signature)

13 Subscribed and sworn to before me this ... day of ....,  
14 19...

15 Seal ..... (Person authorized to take oaths)

16 ..... (Title or notarial information)"

17 Section 3. Section 25-13-404, MCA, is amended to read:

18 "25-13-404. Return of the execution. (1) Except as  
19 provided in subsection subsections (2) and (3), execution  
20 may be made returnable to the clerk of the court in which  
21 the judgment was rendered, at any time not less than 10 or  
22 more than 60 days after its receipt of the recovery by the  
23 sheriff following imposition of levy, to-the--clerk--of--the  
24 court--in--which--the--judgment--was--rendered as provided in  
25 25-13-402.

1 (2) The writ of execution issued by the county  
2 treasurer under 15-16-401 may be made returnable, at any  
3 time not less than 10 or more than 90 days after its receipt  
4 by the sheriff, to the county treasurer of the county in  
5 which the writ was issued.

6 (3) In compliance with the provisions of subsection  
7 (1) and in lieu of returning the writ of execution to the  
8 clerk of the court, the sheriff may enclose his return of  
9 the writ in an envelope to the officer, agent, or attorney  
10 who sent it and deposit it in the post office, prepaying the  
11 postage."

12 Section 4. Section 25-13-701, MCA, is amended to read:

13 "25-13-701. Notice of sale on execution. (1) Before  
14 the sale of the property on execution, notice thereof must  
15 be given as follows:

16 (a) in case of perishable property, by posting written  
17 notice of the time and place of the sale in three public  
18 places of in the township-or-city county where the sale is  
19 to take place, for such time as may be reasonable  
20 considering the character and condition of the property;

21 (b) in case of other personal property, by posting a  
22 similar notice in three public places in the township-or  
23 city county where the sale is to take place, for not less  
24 than 5 days or more than 10 days, and by publishing a copy  
25 of the notice at least 1 week before the sale in a newspaper

1 of general circulation published in the county, if there be  
2 one;

3 (c) in case of real property, by posting a similar  
4 notice, particularly describing the property, for 20 days in  
5 three public places of in the township-or-city county where  
6 the property is situated and also where the property is to  
7 be sold, which may be either at the courthouse or on the  
8 premises, and publishing a copy thereof once a week for the  
9 same period in some newspaper published in the county, if  
10 there be one, which notice shall be substantially as  
11 follows:

12 SHERIFF'S SALE

13 ....., Plaintiff,

14 vs.

15 ....., Defendant,

16 To be sold at sheriff's sale on the .... day of .....,  
17 19.., at ..... (Here insert brief description of  
18 property.)

19 Signed ....., Sheriff

20 (2) Any sheriff publishing a notice not in accordance  
21 with the form set forth in subsection (1)(c) and which shall  
22 cost more than such a notice shall not be entitled to any  
23 costs for publication of the same but shall be personally  
24 liable for the payment of such publication."

25 Section 5. Section 61-12-401, MCA, is amended to read:

1 "61-12-401. Taking vehicle into custody. (1) The  
2 following law enforcement agencies may take into custody any  
3 motor vehicle found abandoned for a period of 48 hours or  
4 more on any public highway, or for a period of 5 days or  
5 more on any city street, public property, or private  
6 property:

7 (a) the Montana highway patrol if the vehicle is upon  
8 the right-of-way of any public highway other than a county  
9 road;

10 (b) the sheriff of the county if the vehicle is upon  
11 the right-of-way of any county road within the county;

12 (c) the city police if the vehicle is upon a city  
13 street within the city.

14 (2) The Montana highway patrol, sheriff of the county,  
15 or the city police may use its or his personnel, equipment,  
16 and facilities for the removal and preservation storage of  
17 the vehicle, or may hire other personnel, equipment, and  
18 facilities for those purposes.

19 (3) At the request of the owner or person in lawful  
20 possession or control of the private property, the sheriff  
21 of the county in which the vehicle is located or the city  
22 police of the city in which the vehicle is located may  
23 remove and hold it in the manner and upon the conditions  
24 provided in subsections (1) and (2)."

25 Section 6. Section 61-12-402, MCA, is amended to read:

1 "61-12-402. Notice to owner. (1) Within 72 hours after  
 2 any vehicle is removed and held by or at the direction of  
 3 the Montana highway patrol, the highway patrol shall notify  
 4 the sheriff of the county in which the vehicle was located  
 5 at the time it was taken into custody and the place where  
 6 the vehicle is being held. In addition the Montana highway  
 7 patrol shall furnish the sheriff a complete description of  
 8 the vehicle to include year, make, model, serial number, and  
 9 license number if available, any costs incurred to that date  
 10 in the removal, preservation storage, and custody of the  
 11 vehicle, and any available information concerning its  
 12 ownership.

13 (2) The sheriff or the city police shall make  
 14 reasonable efforts to ascertain the name and address of the  
 15 owner, lienholder, or person entitled to possession of the  
 16 vehicle taken into custody under 61-12-401. If such name and  
 17 address are ascertained, the sheriff or the city police  
 18 shall notify such owner and lienholder or person of the  
 19 location of the vehicle.

20 (3) If the vehicle is registered in the office of the  
 21 department, notice shall be deemed given when a registered  
 22 or certified letter addressed to the registered owner of the  
 23 vehicle and lienholder, if any, at the latest address shown  
 24 by the records in the office of the department, return  
 25 receipt requested and postage prepaid thereon, is mailed at

1 least 30 days before the vehicle is sold as hereinafter  
 2 provided.

3 (4) If the identity of the last registered owner  
 4 cannot be determined, or if the registration contains no  
 5 address for the owner, or if it is impossible to determine  
 6 with reasonable certainty the identity and addresses of all  
 7 lienholders, notice by one publication in one newspaper of  
 8 general circulation in the county where the motor vehicle  
 9 was abandoned shall be sufficient to meet all requirements  
 10 of notice pursuant to this part. Such notice by publication  
 11 can contain multiple listings of abandoned vehicles. Any  
 12 such notice shall be ~~within-the-time-requirements-prescribed~~  
 13 ~~for--notice--by--certified-or-registered-mail-and-shall-have~~  
 14 ~~the-same-contents-required-for--a--notice--by--certified--or~~  
 15 ~~registered-mail~~ provided in the same manner as prescribed in  
 16 25-13-701(1)(b).

17 (5) If the abandoned vehicle is in the possession of a  
 18 motor vehicle wrecking facility licensed under 75-10-511,  
 19 the wrecking facility may make the required search to  
 20 ascertain the name and address of the owner, lienholder, or  
 21 person entitled to possession of the vehicle and shall give  
 22 the notices required in subsections (2) through (4). The  
 23 wrecking facility shall deliver to the sheriff or the city  
 24 police a certificate describing the efforts made to  
 25 ascertain the name and address of the owner, lienholder, or

1 person entitled to possession of the vehicle and shall  
2 deliver to the sheriff or the city police proof of the  
3 notice given.

4 (6) A vehicle found by law enforcement officials to be  
5 a "junk vehicle" as defined by 75-10-501 and certified as  
6 having an appraised value of \$100 or less as determined by  
7 the county assessor in accordance with the rules of the  
8 department of revenue may be directly submitted for disposal  
9 in accordance with the provisions of part 5 of chapter 10,  
10 Title 75, upon a release given by the sheriff or the city  
11 police. In the release the sheriff or the city police shall  
12 include a description of the vehicle including year, make,  
13 model, serial number, and license number if available. A  
14 release provided by the sheriff or the city police under  
15 this section shall be transmitted to the motor vehicle  
16 wrecking facility and shall be considered by that facility  
17 to meet the requirements for records under 75-10-512 and  
18 75-10-513. Vehicles described in this section may be  
19 submitted without notice and without a required holding  
20 period."

21 Section 7. Section 61-12-403, MCA, is amended to read:

22 "61-12-403. Reclaiming vehicle. The owner, lienholder,  
23 or person entitled to possession of the vehicle may reclaim  
24 it at any time after it is taken into custody and before it  
25 is sold. He shall present to the sheriff of the county or

1 the city police of the city in which the vehicle was located  
2 at the time it was taken into custody satisfactory proof of  
3 ownership or right to possession, and pay the costs and  
4 expenses incurred in the removal, preservation storage, and  
5 custody of the vehicle. He shall not be required to pay  
6 storage charges for a period longer than 90 days."

7 Section 8. Section 61-12-407, MCA, is amended to read:

8 "61-12-407. Transmitting return of sale and balance of  
9 proceeds. (1) When any vehicle is sold as provided in  
10 61-12-404 the sheriff or the city police shall transmit to  
11 the department and to the county treasurer or to the city  
12 treasurer, respectively, a return of sale setting forth a  
13 description of the vehicle, the purchase price, the name and  
14 address of the purchaser, the costs incurred in the sale,  
15 and the costs and expenses incurred in the removal,  
16 preservation storage, and custody of the vehicle.

17 (2) With the return of sale, the sheriff shall  
18 transmit to the county treasurer or the city police shall  
19 transmit to the city treasurer the balance of the proceeds  
20 of the sale after deducting the costs incurred in the sale  
21 and the costs and expenses incurred in the removal,  
22 preservation storage, and custody of the vehicle.

23 (3) Upon receipt of the return of sale and such  
24 balance from:

25 (a) the county sheriff, the county treasurer shall

1 file the return in his office and deposit the balance in the  
2 county road fund on all vehicles seized by the sheriff or  
3 highway patrol; or

4 (b) the city police, the city treasurer shall file the  
5 return in his office and deposit the balance in the city  
6 street fund on all vehicles seized by the city police."

7 Section 9. Section 71-3-1203, MCA, is amended to read:

8 "71-3-1203. Enforcement of lien -- sale. If payment  
9 for such work, labor, feed, or services or material  
10 furnished is not made within 30 days after the performance  
11 or furnishing of the same, the person entitled to a lien  
12 under the provisions of this section may enforce said lien  
13 in the following manner:

14 (1) He shall deliver to the sheriff or a constable of  
15 the county in which the property is located a statement of  
16 the amount of his claim against said property, a description  
17 of the property, and the name of the owner thereof or of the  
18 person at whose request the work, labor, or services were  
19 performed or the materials furnished.

20 (2) Upon receipt of such statement, the sheriff or  
21 constable shall proceed to advertise and sell at public  
22 auction so much of the property covered by said lien as will  
23 satisfy same.

24 (3) Such sale shall be advertised, conducted, and held  
25 in the same manner as ~~provided--by--law--for--the--sale--of~~

1 ~~mortgaged-personal-property-by-sheriffs--Such--notice--shall~~  
2 ~~be--given--for--not--less--than--5--or--more--than--10--days--prior--to~~  
3 ~~the--date--of--sale prescribed in 25-13-701(1)(b).~~

4 (4) The proceeds of the sale shall be applied by the  
5 sheriff to the discharge of the lien and the cost of the  
6 proceedings in selling the property and enforcing the lien,  
7 and the remainder, if any, or such part as is required to  
8 discharge the claims, shall be turned over by the sheriff to  
9 the holders, in the order of their precedence, of the  
10 chattel mortgages or other lien claimants of record against  
11 said property, and the balance of the proceeds shall be  
12 turned over to the owner of the property.

13 (5) However, before making seizure of any property  
14 under the provisions of this section, the sheriff may  
15 require an indemnity bond from the lienor in that may not to  
16 exceed double the amount of the claim against said property,  
17 said bond and the surety or sureties thereon to be approved  
18 by said sheriff."

19 NEW SECTION. Section 10. Security for sheriff's costs  
20 when property seized. If the sheriff will incur substantial  
21 costs in transporting, keeping, or storing the property  
22 seized, the party requesting service of an order for claim  
23 and delivery shall provide a bond or other security to pay  
24 for all costs that may be incurred as a result of the  
25 service of such order.

1        NEW SECTION. Section 11. Codification instruction.  
2 Section 10 is intended to be codified as an integral part of  
3 Title 27, chapter 17, part 2, and the provisions of Title  
4 27, chapter 17, part 2, apply to section 10.

5        NEW SECTION. Section 12. Coordination instruction. If  
6 this bill and Senate Bill No. 16, including the section of  
7 that bill amending 71-3-1203(3), are passed and approved,  
8 the amendment in Senate Bill No. 16 to 71-3-1203(3) is void.

9        NEW SECTION. Section 13. Effective date. Sections 1  
10 and 2 and this section are effective July 1, 1987.

-End-



APPROVED BY COMMITTEE  
ON JUDICIARY

SENATE BILL NO. 57

INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE SHERIFF'S PROCEDURES IN CIVIL MATTERS; CHANGING THE TIME REQUIREMENTS FOR THE PAYMENT OF FEES INTO THE COUNTY TREASURY; CLARIFYING THE TIME FOR EXECUTION AND RETURN OF A WRIT OF EXECUTION; PROVIDING AN ALTERNATIVE METHOD FOR THE RETURN OF A WRIT OF EXECUTION; MODIFYING NOTICE REQUIREMENTS FOR THE CONDUCT OF A SHERIFF'S SALE AND FOR THE ENFORCEMENT OF CERTAIN LIENS; REVISING THE LAWS RELATING TO THE IMPOUNDMENT AND SALE OF ABANDONED MOTOR VEHICLES; ALLOWING THE SHERIFF TO REQUIRE SECURITY FOR COSTS INCURRED IN THE SEIZURE OF PROPERTY UNDER AN ORDER FOR CLAIM AND DELIVERY; AMENDING SECTIONS 7-4-2511, 7-4-2512, 25-13-402, 25-13-404, 25-13-701, 61-12-401 THROUGH 61-12-403, 61-12-407, AND 71-3-1203, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 7-4-2511, MCA, is amended to read:

"7-4-2511. Collection and disposal of fees. (1) Each salaried county officer must charge and collect for the use of his county and pay into the county treasury on-the--first Monday by the 10th day in each month all fees now or hereafter allowed by law, paid or chargeable in all cases,

except as provided in 25-10-403. Nothing in this subsection applies to the compensation received by the sheriff as mileage while in the performance of official duties or for the board of prisoners or other persons while in his custody.

(2) No salaried county officer may receive for his own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered by him. Unless otherwise provided, all fees, penalties, and emoluments of every kind collected by a salaried county officer are for the sole use of the county and must be accounted for and paid to the county treasurer as provided by subsection (1) and credited to the general fund of the county."

Section 2. Section 7-4-2512, MCA, is amended to read:

"7-4-2512. Statement and affidavit of fees collected. (1) The fees and compensation collected and chargeable for the use of the county in each month must be paid to the county treasurer on-the-first-Monday by the 10th day of the following month and must be accompanied by a statement and copy of the fee book for the preceding month, duly verified by the officer making the payment.

(2) The affidavit must be in the following form:

State of Montana

County of ....

1 I, ....., of the county of ....., do swear that the fee  
 2 book in my office contains a true statement in detail of all  
 3 fees and compensations of every kind and nature for official  
 4 services rendered by me, paid or chargeable, or by my  
 5 deputies or assistants for the month of ....., 19..., and that  
 6 this fee book shows the full amount received or chargeable  
 7 in said month and since my last monthly payment; and neither  
 8 myself nor, to my knowledge or belief, any of my deputies or  
 9 assistants have rendered any official service, except for  
 10 the county or state, which is not fully set out in this fee  
 11 book; and that the foregoing statement is a full, true, and  
 12 correct copy thereof.

13 ..... (Signature)

14 Subscribed and sworn to before me this ... day of .....,  
 15 19...

16 Seal ..... (Person authorized to take oaths)

17 ..... (Title or notarial information)"

18 SECTION 3. SECTION 25-13-402, MCA, IS AMENDED TO READ:

19 "25-13-402. How writ executed. The sheriff must  
 20 execute the writ against the property of the judgment debtor  
 21 no later than 60 days after receipt of the writ by levying  
 22 on a sufficient amount of property, if there be sufficient,  
 23 collecting or selling the things in action, and selling the  
 24 other property and paying to the plaintiff or his attorney  
 25 so much of the proceeds as will satisfy the judgment. Any

1 excess in the proceeds over the judgment and accruing costs  
 2 must be returned to the judgment debtor unless otherwise  
 3 directed by the judgment or order of the court. When there  
 4 is more property of the judgment debtor than is sufficient  
 5 to satisfy the judgment and accruing costs within the view  
 6 of the sheriff, he must levy only on such part of the  
 7 property as the judgment debtor may indicate if the property  
 8 indicated be amply sufficient to satisfy the judgment and  
 9 costs."

10 Section 4. Section 25-13-404, MCA, is amended to read:

11 "25-13-404. Return of the execution. (1) Except as  
 12 provided in subsection subsections (2) and (3), execution  
 13 may be made returnable to the clerk of the court in which  
 14 the judgment was rendered, at any time not less than 10 or  
 15 more than 60 days after its receipt of the recovery by the  
 16 sheriff following imposition of levy, to the clerk of the  
 17 court-in-which-the-judgment--was--rendered as provided in  
 18 25-13-402.

19 (2) The writ of execution issued by the county  
 20 treasurer under 15-16-401 may be made returnable, at any  
 21 time not less than 10 or more than 90 days after its receipt  
 22 by the sheriff, to the county treasurer of the county in  
 23 which the writ was issued.

24 (3) In compliance with the provisions of subsection  
 25 (1) and in lieu of returning the writ of execution to the

1 clerk of the court, the sheriff may enclose his return of  
2 the writ in an envelope to the officer, agent, or attorney  
3 who sent it and deposit it in the post office, prepaying the  
4 postage."

5 Section 5. Section 25-13-701, MCA, is amended to read:  
6 "25-13-701. Notice of sale on execution. (1) Before  
7 the sale of the property on execution, notice thereof must  
8 be given as follows:

9 (a) in case of perishable property, by posting written  
10 notice of the time and place of the sale in three public  
11 places of in the township-or-city county where the sale is  
12 to take place, for such time as may be reasonable  
13 considering the character and condition of the property;

14 (b) in case of other personal property, by posting a  
15 similar notice in three public places in the township--or  
16 city county where the sale is to take place, for not less  
17 than 5 days or more than 10 days, and by publishing a copy  
18 of the notice at least 1 week before the sale in a newspaper  
19 of general circulation published in the county, if there be  
20 one;

21 (c) in case of real property, by posting a similar  
22 notice, particularly describing the property, for 20 days in  
23 three public places of in the township-or-city county where  
24 the property is situated and also where the property is to  
25 be sold, which may be either at the courthouse or on the

1 premises, and publishing a copy thereof once a week for the  
2 same period in some newspaper published in the county, if  
3 there be one, which notice shall be substantially as  
4 follows:

5 SHERIFF'S SALE  
6 ....., Plaintiff,  
7 vs.  
8 ....., Defendant,

9 To be sold at sheriff's sale on the .... day of ....,  
10 19.., at ..... (Here insert brief description of  
11 property.)

12 Signed ....., Sheriff

13 (2) Any sheriff publishing a notice not in accordance  
14 with the form set forth in subsection (1)(c) and which shall  
15 cost more than such a notice shall not be entitled to any  
16 costs for publication of the same but shall be personally  
17 liable for the payment of such publication."

18 Section 6. Section 61-12-401, MCA, is amended to read:

19 "61-12-401. Taking vehicle into custody. (1) The  
20 following law enforcement agencies may take into custody any  
21 motor vehicle found abandoned for a period of 48 hours or  
22 more on any public highway, or for a period of 5 days or  
23 more on any city street, public property, or private  
24 property:

25 (a) the Montana highway patrol if the vehicle is upon

1 the right-of-way of any public highway other than a county  
2 road;

3 (b) the sheriff of the county if the vehicle is upon  
4 the right-of-way of any county road within the county;

5 (c) the city police if the vehicle is upon a city  
6 street within the city.

7 (2) The Montana highway patrol, sheriff of the county,  
8 or the city police may use its or his personnel, equipment,  
9 and facilities for the removal and preservation storage of  
10 the vehicle, or may hire other personnel, equipment, and  
11 facilities for those purposes.

12 (3) At the request of the owner or person in lawful  
13 possession or control of the private property, the sheriff  
14 of the county in which the vehicle is located or the city  
15 police of the city in which the vehicle is located may  
16 remove and hold it in the manner and upon the conditions  
17 provided in subsections (1) and (2)."

18 Section 7. Section 61-12-402, MCA, is amended to read:

19 "61-12-402. Notice to owner. (1) Within 72 hours after  
20 any vehicle is removed and held by or at the direction of  
21 the Montana highway patrol, the highway patrol shall notify  
22 the sheriff of the county in which the vehicle was located  
23 at the time it was taken into custody and the place where  
24 the vehicle is being held. In addition the Montana highway  
25 patrol shall furnish the sheriff a complete description of

1 the vehicle to include year, make, model, serial number, and  
2 license number if available, any costs incurred to that date  
3 in the removal, preservation storage, and custody of the  
4 vehicle, and any available information concerning its  
5 ownership.

6 (2) The sheriff or the city police shall make  
7 reasonable efforts to ascertain the name and address of the  
8 owner, lienholder, or person entitled to possession of the  
9 vehicle taken into custody under 61-12-401. If such name and  
10 address are ascertained, the sheriff or the city police  
11 shall notify such owner and lienholder or person of the  
12 location of the vehicle.

13 (3) If the vehicle is registered in the office of the  
14 department, notice shall be deemed given when a registered  
15 or certified letter addressed to the registered owner of the  
16 vehicle and lienholder, if any, at the latest address shown  
17 by the records in the office of the department, return  
18 receipt requested and postage prepaid thereon, is mailed at  
19 least 30 days before the vehicle is sold as hereinafter  
20 provided.

21 (4) If the identity of the last registered owner  
22 cannot be determined, or if the registration contains no  
23 address for the owner, or if it is impossible to determine  
24 with reasonable certainty the identity and addresses of all  
25 lienholders, notice by one publication in one newspaper of

1 general circulation in the county where the motor vehicle  
 2 was abandoned shall be sufficient to meet all requirements  
 3 of notice pursuant to this part. Such notice by publication  
 4 can contain multiple listings of abandoned vehicles. Any  
 5 such notice shall be ~~within-the-time-requirements-prescribed~~  
 6 ~~for-notice-by-certified-or-registered-mail--and--shall--have~~  
 7 ~~the--same--contents--required--for--a-notice-by-certified-or~~  
 8 ~~registered-mail~~ provided in the same manner as prescribed in  
 9 25-13-701(1)(b).

10 (5) If the abandoned vehicle is in the possession of a  
 11 motor vehicle wrecking facility licensed under 75-10-511,  
 12 the wrecking facility may make the required search to  
 13 ascertain the name and address of the owner, lienholder, or  
 14 person entitled to possession of the vehicle and shall give  
 15 the notices required in subsections (2) through (4). The  
 16 wrecking facility shall deliver to the sheriff or the city  
 17 police a certificate describing the efforts made to  
 18 ascertain the name and address of the owner, lienholder, or  
 19 person entitled to possession of the vehicle and shall  
 20 deliver to the sheriff or the city police proof of the  
 21 notice given.

22 (6) A vehicle found by law enforcement officials to be  
 23 a "junk vehicle" as defined by 75-10-501 and certified as  
 24 having an appraised value of \$100 or less as determined by  
 25 the county assessor in accordance with the rules of the

1 department of revenue may be directly submitted for disposal  
 2 in accordance with the provisions of part 5 of chapter 10,  
 3 Title 75, upon a release given by the sheriff or the city  
 4 police. In the release the sheriff or the city police shall  
 5 include a description of the vehicle including year, make,  
 6 model, serial number, and license number if available. A  
 7 release provided by the sheriff or the city police under  
 8 this section shall be transmitted to the motor vehicle  
 9 wrecking facility and shall be considered by that facility  
 10 to meet the requirements for records under 75-10-512 and  
 11 75-10-513. Vehicles described in this section may be  
 12 submitted without notice and without a required holding  
 13 period."

14 Section 8. Section 61-12-403, MCA, is amended to read:  
 15 "61-12-403. Reclaiming vehicle. The owner, lienholder,  
 16 or person entitled to possession of the vehicle may reclaim  
 17 it at any time after it is taken into custody and before it  
 18 is sold. He shall present to the sheriff of the county or  
 19 the city police of the city in which the vehicle was located  
 20 at the time it was taken into custody satisfactory proof of  
 21 ownership or right to possession, and pay the costs and  
 22 expenses incurred in the removal, preservation storage, and  
 23 custody of the vehicle. He shall not be required to pay  
 24 storage charges for a period longer than 90 days."

25 Section 9. Section 61-12-407, MCA, is amended to read:

1 "61-12-407. Transmitting return of sale and balance of  
 2 proceeds. (1) When any vehicle is sold as provided in  
 3 61-12-404 the sheriff or the city police shall transmit to  
 4 the department and to the county treasurer or to the city  
 5 treasurer, respectively, a return of sale setting forth a  
 6 description of the vehicle, the purchase price, the name and  
 7 address of the purchaser, the costs incurred in the sale,  
 8 and the costs and expenses incurred in the removal,  
 9 preservation storage, and custody of the vehicle.

10 (2) With the return of sale, the sheriff shall  
 11 transmit to the county treasurer or the city police shall  
 12 transmit to the city treasurer the balance of the proceeds  
 13 of the sale after deducting the costs incurred in the sale  
 14 and the costs and expenses incurred in the removal,  
 15 preservation storage, and custody of the vehicle.

16 (3) Upon receipt of the return of sale and such  
 17 balance from:

18 (a) the county sheriff, the county treasurer shall  
 19 file the return in his office and deposit the balance in the  
 20 county road fund on all vehicles seized by the sheriff or  
 21 highway patrol; or

22 (b) the city police, the city treasurer shall file the  
 23 return in his office and deposit the balance in the city  
 24 street fund on all vehicles seized by the city police."

25 Section 10. Section 71-3-1203, MCA, is amended to

1 read:

2 "71-3-1203. Enforcement of lien -- sale. If payment  
 3 for such work, labor, feed, or services or material  
 4 furnished is not made within 30 days after the performance  
 5 or furnishing of the same, the person entitled to a lien  
 6 under the provisions of this section may enforce said lien  
 7 in the following manner:

8 (1) He shall deliver to the sheriff or a constable of  
 9 the county in which the property is located a statement of  
 10 the amount of his claim against said property, a description  
 11 of the property, and the name of the owner thereof or of the  
 12 person at whose request the work, labor, or services were  
 13 performed or the materials furnished.

14 (2) Upon receipt of such statement, the sheriff or  
 15 constable shall proceed to advertise and sell at public  
 16 auction so much of the property covered by said lien as will  
 17 satisfy same.

18 (3) Such sale shall be advertised, conducted, and held  
 19 in the same manner as ~~provided by law for the sale of~~  
 20 ~~mortgaged personal property by sheriffs. Such notice shall~~  
 21 ~~be given for not less than 5 or more than 10 days prior to~~  
 22 ~~the date of sale~~ prescribed in 25-13-701(1)(b).

23 (4) The proceeds of the sale shall be applied by the  
 24 sheriff to the discharge of the lien and the cost of the  
 25 proceedings in selling the property and enforcing the lien,

1 and the remainder, if any, or such part as is required to  
 2 discharge the claims, shall be turned over by the sheriff to  
 3 the holders, in the order of their precedence, of the  
 4 chattel mortgages or other lien claimants of record against  
 5 said property, and the balance of the proceeds shall be  
 6 turned over to the owner of the property.

7 (5) However, before making seizure of any property  
 8 under the provisions of this section, the sheriff may  
 9 require an indemnity bond from the lienor ~~in that may not to~~  
 10 exceed double the amount of the claim against said property,  
 11 said bond and the surety or sureties thereon to be approved  
 12 by said sheriff."

13 NEW SECTION. Section 11. Security for sheriff's costs  
 14 when property seized. If the sheriff will incur substantial  
 15 costs in transporting, keeping, or storing the property  
 16 seized, the party requesting service of an order for claim  
 17 and delivery shall provide a bond or other security to pay  
 18 for all costs that may be incurred as a result of the  
 19 service of such order.

20 NEW SECTION. Section 12. Codification instruction.  
 21 Section ~~10~~ 11 is intended to be codified as an integral part  
 22 of Title 27, chapter 17, part 2, and the provisions of Title  
 23 27, chapter 17, part 2, apply to section ~~10~~ 11.

24 NEW SECTION. Section 13. Coordination instruction. If  
 25 this bill and Senate Bill No. 16, including the section of

1 that bill amending 71-3-1203(3), are passed and approved,  
 2 the amendment in Senate Bill No. 16 to 71-3-1203(3) is void.  
 3 NEW SECTION. Section 14. Effective date. Sections 1  
 4 and 2 and this section are effective July 1, 1987.

-End-

## 1 SENATE BILL NO. 57

2 INTRODUCED BY HALLIGAN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE SHERIFF'S  
5 PROCEDURES IN CIVIL MATTERS; CHANGING THE TIME REQUIREMENTS  
6 FOR THE PAYMENT OF FEES INTO THE COUNTY TREASURY; CLARIFYING  
7 THE TIME FOR EXECUTION AND RETURN OF A WRIT OF EXECUTION;  
8 PROVIDING AN ALTERNATIVE METHOD FOR THE RETURN OF A WRIT OF  
9 EXECUTION; MODIFYING NOTICE REQUIREMENTS FOR THE CONDUCT OF  
10 A SHERIFF'S SALE AND FOR THE ENFORCEMENT OF CERTAIN LIENS;  
11 REVISING THE LAWS RELATING TO THE IMPOUNDMENT AND SALE OF  
12 ABANDONED MOTOR VEHICLES; ALLOWING THE SHERIFF TO REQUIRE  
13 SECURITY FOR COSTS INCURRED IN THE SEIZURE OF PROPERTY UNDER  
14 AN ORDER FOR CLAIM AND DELIVERY; AMENDING SECTIONS  
15 7-4-2511, 7-4-2512, 25-13-402, 25-13-404, 25-13-701,  
16 61-12-401 THROUGH 61-12-403, 61-12-407, AND 71-3-1203, MCA;  
17 AND PROVIDING AN EFFECTIVE DATE."  
18

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

20 Section 1. Section 7-4-2511, MCA, is amended to read:

21 "7-4-2511. Collection and disposal of fees. (1) Each  
22 salaried county officer must charge and collect for the use  
23 of his county and pay into the county treasury ~~on-the--first~~  
24 Monday by the 10th day in each month all fees now or  
25 hereafter allowed by law, paid or chargeable in all cases,

1 except as provided in 25-10-403. Nothing in this subsection  
2 applies to the compensation received by the sheriff as  
3 mileage while in the performance of official duties or for  
4 the board of prisoners or other persons while in his  
5 custody.

6 (2) No salaried county officer may receive for his own  
7 use any fees, penalties, or emoluments of any kind, except  
8 the salary as provided by law, for any official service  
9 rendered by him. Unless otherwise provided, all fees,  
10 penalties, and emoluments of every kind collected by a  
11 salaried county officer are for the sole use of the county  
12 and must be accounted for and paid to the county treasurer  
13 as provided by subsection (1) and credited to the general  
14 fund of the county."

15 Section 2. Section 7-4-2512, MCA, is amended to read:

16 "7-4-2512. Statement and affidavit of fees collected.

17 (1) The fees and compensation collected and chargeable for  
18 the use of the county in each month must be paid to the  
19 county treasurer ~~on-the-first-Monday~~ by the 10th day of the  
20 following month and must be accompanied by a statement and  
21 copy of the fee book for the preceding month, duly verified  
22 by the officer making the payment.

23 (2) The affidavit must be in the following form:

24 State of Montana

25 County of ....



1 I, ....., of the county of ....., do swear that the fee  
 2 book in my office contains a true statement in detail of all  
 3 fees and compensations of every kind and nature for official  
 4 services rendered by me, paid or chargeable, or by my  
 5 deputies or assistants for the month of ....., 19.., and that  
 6 this fee book shows the full amount received or chargeable  
 7 in said month and since my last monthly payment; and neither  
 8 myself nor, to my knowledge or belief, any of my deputies or  
 9 assistants have rendered any official service, except for  
 10 the county or state, which is not fully set out in this fee  
 11 book; and that the foregoing statement is a full, true, and  
 12 correct copy thereof.

13 ..... (Signature)  
 14 Subscribed and sworn to before me this ... day of .....,  
 15 19...  
 16 Seal ..... (Person authorized to take oaths)  
 17 ..... (Title or notarial information)"

18 SECTION 3. SECTION 25-13-402, MCA, IS AMENDED TO READ:  
 19 "25-13-402. How writ executed. The sheriff must  
 20 execute the writ against the property of the judgment debtor  
 21 no later than 60 days after receipt of the writ by levying  
 22 on a sufficient amount of property, if there be sufficient,  
 23 collecting or selling the things in action, and selling the  
 24 other property and paying to the plaintiff or his attorney  
 25 so much of the proceeds as will satisfy the judgment. Any

1 excess in the proceeds over the judgment and accruing costs  
 2 must be returned to the judgment debtor unless otherwise  
 3 directed by the judgment or order of the court. When there  
 4 is more property of the judgment debtor than is sufficient  
 5 to satisfy the judgment and accruing costs within the view  
 6 of the sheriff, he must levy only on such part of the  
 7 property as the judgment debtor may indicate if the property  
 8 indicated be amply sufficient to satisfy the judgment and  
 9 costs."

10 Section 4. Section 25-13-404, MCA, is amended to read:  
 11 "25-13-404. Return of the execution. (1) Except as  
 12 provided in subsection subsections (2) and (3), execution  
 13 may be made returnable to the clerk of the court in which  
 14 the judgment was rendered, at any time not less than 10 or  
 15 more than 60 days after its receipt of the recovery by the  
 16 sheriff following imposition of levy, to-the-clerk-of-the  
 17 court-in-which-the-judgment--was--rendered as provided in  
 18 25-13-402.

19 (2) The writ of execution issued by the county  
 20 treasurer under 15-16-401 may be made returnable, at any  
 21 time not less than 10 or more than 90 days after its receipt  
 22 by the sheriff, to the county treasurer of the county in  
 23 which the writ was issued.

24 (3) In compliance with the provisions of subsection  
 25 (1) and in lieu of returning the writ of execution to the

1 clerk of the court, the sheriff may enclose his return of  
2 the writ in an envelope to the officer, agent, or attorney  
3 who sent it and deposit it in the post office, prepaying the  
4 postage."

5 Section 5. Section 25-13-701, MCA, is amended to read:  
6 "25-13-701. Notice of sale on execution. (1) Before  
7 the sale of the property on execution, notice thereof must  
8 be given as follows:

9 (a) in case of perishable property, by posting written  
10 notice of the time and place of the sale in three public  
11 places of in the township-or-city county where the sale is  
12 to take place, for such time as may be reasonable  
13 considering the character and condition of the property;

14 (b) in case of other personal property, by posting a  
15 similar notice in three public places in the township--or  
16 city county where the sale is to take place, for not less  
17 than 5 days or more than 10 days, and by publishing a copy  
18 of the notice at least 1 week before the sale in a newspaper  
19 of general circulation published in the county, if there be  
20 one;

21 (c) in case of real property, by posting a similar  
22 notice, particularly describing the property, for 20 days in  
23 three public places of in the township-or-city county where  
24 the property is situated and also where the property is to  
25 be sold, which may be either at the courthouse or on the

1 premises, and publishing a copy thereof once a week for the  
2 same period in some newspaper published in the county, if  
3 there be one, which notice shall be substantially as  
4 follows:

5 SHERIFF'S SALE

6 ..... Plaintiff,  
7 vs.  
8 ..... Defendant,

9 To be sold at sheriff's sale on the .... day of ....,  
10 19.., at ..... (Here insert brief description of  
11 property.)

12 Signed ....., Sheriff

13 (2) Any sheriff publishing a notice not in accordance  
14 with the form set forth in subsection (1)(c) and which shall  
15 cost more than such a notice shall not be entitled to any  
16 costs for publication of the same but shall be personally  
17 liable for the payment of such publication."

18 Section 6. Section 61-12-401, MCA, is amended to read:

19 "61-12-401. Taking vehicle into custody. (1) The  
20 following law enforcement agencies may take into custody any  
21 motor vehicle found abandoned for a period of 48 hours or  
22 more on any public highway, or for a period of 5 days or  
23 more on any city street, public property, or private  
24 property:

25 (a) the Montana highway patrol if the vehicle is upon

1 the right-of-way of any public highway other than a county  
2 road;

3 (b) the sheriff of the county if the vehicle is upon  
4 the right-of-way of any county road within the county;

5 (c) the city police if the vehicle is upon a city  
6 street within the city.

7 (2) The Montana highway patrol, sheriff of the county,  
8 or the city police may use its or his personnel, equipment,  
9 and facilities for the removal and preservation storage of  
10 the vehicle, or may hire other personnel, equipment, and  
11 facilities for those purposes.

12 (3) At the request of the owner or person in lawful  
13 possession or control of the private property, the sheriff  
14 of the county in which the vehicle is located or the city  
15 police of the city in which the vehicle is located may  
16 remove and hold it in the manner and upon the conditions  
17 provided in subsections (1) and (2)."

18 Section 7. Section 61-12-402, MCA, is amended to read:

19 "61-12-402. Notice to owner. (1) Within 72 hours after  
20 any vehicle is removed and held by or at the direction of  
21 the Montana highway patrol, the highway patrol shall notify  
22 the sheriff of the county in which the vehicle was located  
23 at the time it was taken into custody and the place where  
24 the vehicle is being held. In addition the Montana highway  
25 patrol shall furnish the sheriff a complete description of

1 the vehicle to include year, make, model, serial number, and  
2 license number if available, any costs incurred to that date  
3 in the removal, preservation storage, and custody of the  
4 vehicle, and any available information concerning its  
5 ownership.

6 (2) The sheriff or the city police shall make  
7 reasonable efforts to ascertain the name and address of the  
8 owner, lienholder, or person entitled to possession of the  
9 vehicle taken into custody under 61-12-401. If such name and  
10 address are ascertained, the sheriff or the city police  
11 shall notify such owner and lienholder or person of the  
12 location of the vehicle.

13 (3) If the vehicle is registered in the office of the  
14 department, notice shall be deemed given when a registered  
15 or certified letter addressed to the registered owner of the  
16 vehicle and lienholder, if any, at the latest address shown  
17 by the records in the office of the department, return  
18 receipt requested and postage prepaid thereon, is mailed at  
19 least 30 days before the vehicle is sold as hereinafter  
20 provided.

21 (4) If the identity of the last registered owner  
22 cannot be determined, or if the registration contains no  
23 address for the owner, or if it is impossible to determine  
24 with reasonable certainty the identity and addresses of all  
25 lienholders, notice by one publication in one newspaper of

1 general circulation in the county where the motor vehicle  
 2 was abandoned shall be sufficient to meet all requirements  
 3 of notice pursuant to this part. Such notice by publication  
 4 can contain multiple listings of abandoned vehicles. Any  
 5 such notice shall be ~~within the time requirements prescribed~~  
 6 ~~for notice by certified or registered mail and shall have~~  
 7 ~~the same contents required for a notice by certified or~~  
 8 ~~registered mail~~ provided in the same manner as prescribed in  
 9 25-13-701(1)(b).

10 (5) If the abandoned vehicle is in the possession of a  
 11 motor vehicle wrecking facility licensed under 75-10-511,  
 12 the wrecking facility may make the required search to  
 13 ascertain the name and address of the owner, lienholder, or  
 14 person entitled to possession of the vehicle and shall give  
 15 the notices required in subsections (2) through (4). The  
 16 wrecking facility shall deliver to the sheriff or the city  
 17 police a certificate describing the efforts made to  
 18 ascertain the name and address of the owner, lienholder, or  
 19 person entitled to possession of the vehicle and shall  
 20 deliver to the sheriff or the city police proof of the  
 21 notice given.

22 (6) A vehicle found by law enforcement officials to be  
 23 a "junk vehicle" as defined by 75-10-501 and certified as  
 24 having an appraised value of \$100 or less as determined by  
 25 the county assessor in accordance with the rules of the

1 department of revenue may be directly submitted for disposal  
 2 in accordance with the provisions of part 5 of chapter 10,  
 3 Title 75, upon a release given by the sheriff or the city  
 4 police. In the release the sheriff or the city police shall  
 5 include a description of the vehicle including year, make,  
 6 model, serial number, and license number if available. A  
 7 release provided by the sheriff or the city police under  
 8 this section shall be transmitted to the motor vehicle  
 9 wrecking facility and shall be considered by that facility  
 10 to meet the requirements for records under 75-10-512 and  
 11 75-10-513. Vehicles described in this section may be  
 12 submitted without notice and without a required holding  
 13 period."

14 Section 8. Section 61-12-403, MCA, is amended to read:  
 15 "61-12-403. Reclaiming vehicle. The owner, lienholder,  
 16 or person entitled to possession of the vehicle may reclaim  
 17 it at any time after it is taken into custody and before it  
 18 is sold. He shall present to the sheriff of the county or  
 19 the city police of the city in which the vehicle was located  
 20 at the time it was taken into custody satisfactory proof of  
 21 ownership or right to possession, and pay the costs and  
 22 expenses incurred in the removal, preservation storage, and  
 23 custody of the vehicle. He shall not be required to pay  
 24 storage charges for a period longer than 90 days."

25 Section 9. Section 61-12-407, MCA, is amended to read:

1 "61-12-407. Transmitting return of sale and balance of  
 2 proceeds. (1) When any vehicle is sold as provided in  
 3 61-12-404 the sheriff or the city police shall transmit to  
 4 the department and to the county treasurer or to the city  
 5 treasurer, respectively, a return of sale setting forth a  
 6 description of the vehicle, the purchase price, the name and  
 7 address of the purchaser, the costs incurred in the sale,  
 8 and the costs and expenses incurred in the removal,  
 9 preservation storage, and custody of the vehicle.

10 (2) With the return of sale, the sheriff shall  
 11 transmit to the county treasurer or the city police shall  
 12 transmit to the city treasurer the balance of the proceeds  
 13 of the sale after deducting the costs incurred in the sale  
 14 and the costs and expenses incurred in the removal,  
 15 preservation storage, and custody of the vehicle.

16 (3) Upon receipt of the return of sale and such  
 17 balance from:

18 (a) the county sheriff, the county treasurer shall  
 19 file the return in his office and deposit the balance in the  
 20 county road fund on all vehicles seized by the sheriff or  
 21 highway patrol; or

22 (b) the city police, the city treasurer shall file the  
 23 return in his office and deposit the balance in the city  
 24 street fund on all vehicles seized by the city police."

25 Section 10. Section 71-3-1203, MCA, is amended to

1 read:

2 "71-3-1203. Enforcement of lien -- sale. If payment  
 3 for such work, labor, feed, or services or material  
 4 furnished is not made within 30 days after the performance  
 5 or furnishing of the same, the person entitled to a lien  
 6 under the provisions of this section may enforce said lien  
 7 in the following manner:

8 (1) He shall deliver to the sheriff or a constable of  
 9 the county in which the property is located a statement of  
 10 the amount of his claim against said property, a description  
 11 of the property, and the name of the owner thereof or of the  
 12 person at whose request the work, labor, or services were  
 13 performed or the materials furnished.

14 (2) Upon receipt of such statement, the sheriff or  
 15 constable shall proceed to advertise and sell at public  
 16 auction so much of the property covered by said lien as will  
 17 satisfy same.

18 (3) Such sale shall be advertised, conducted, and held  
 19 in the same manner as provided ~~by law for the sale of~~  
 20 ~~mortgaged personal property by sheriffs. Such notice shall~~  
 21 ~~be given for not less than 5 or more than 10 days prior to~~  
 22 ~~the date of sale~~ prescribed in 25-13-701(1)(b).

23 (4) The proceeds of the sale shall be applied by the  
 24 sheriff to the discharge of the lien and the cost of the  
 25 proceedings in selling the property and enforcing the lien,

1 and the remainder, if any, or such part as is required to  
 2 discharge the claims, shall be turned over by the sheriff to  
 3 the holders, in the order of their precedence, of the  
 4 chattel mortgages or other lien claimants of record against  
 5 said property, and the balance of the proceeds shall be  
 6 turned over to the owner of the property.

7 (5) However, before making seizure of any property  
 8 under the provisions of this section, the sheriff may  
 9 require an indemnity bond from the lienor ~~in that may not to~~  
 10 exceed double the amount of the claim against said property,  
 11 said bond and the surety or sureties thereon to be approved  
 12 by said sheriff."

13 NEW SECTION. Section 11. Security for sheriff's costs  
 14 when property seized. If the sheriff will incur substantial  
 15 costs in transporting, keeping, or storing the property  
 16 seized, the party requesting service of an order for claim  
 17 and delivery shall provide a bond or other security to pay  
 18 for all costs that may be incurred as a result of the  
 19 service of such order.

20 NEW SECTION. Section 12. Codification instruction.  
 21 Section ~~10~~ 11 is intended to be codified as an integral part  
 22 of Title 27, chapter 17, part 2, and the provisions of Title  
 23 27, chapter 17, part 2, apply to section ~~10~~ 11.

24 NEW SECTION. Section 13. Coordination instruction. If  
 25 this bill and Senate Bill No. 16, including the section of

1 that bill amending 71-3-1203(3), are passed and approved,  
 2 the amendment in Senate Bill No. 16 to 71-3-1203(3) is void.  
 3 NEW SECTION. Section 14. Effective date. Sections 1  
 4 and 2 and this section are effective July 1, 1987.

-End-

## 1 SENATE BILL NO. 57

2 INTRODUCED BY HALLIGAN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE SHERIFF'S  
5 PROCEDURES IN CIVIL MATTERS; CHANGING THE TIME REQUIREMENTS  
6 FOR THE PAYMENT OF FEES INTO THE COUNTY TREASURY; CLARIFYING  
7 THE TIME FOR EXECUTION AND RETURN OF A WRIT OF EXECUTION;  
8 PROVIDING AN ALTERNATIVE METHOD FOR THE RETURN OF A WRIT OF  
9 EXECUTION; MODIFYING NOTICE REQUIREMENTS FOR THE CONDUCT OF  
10 A SHERIFF'S SALE AND FOR THE ENFORCEMENT OF CERTAIN LIENS;  
11 REVISING THE LAWS RELATING TO THE IMPOUNDMENT AND SALE OF  
12 ABANDONED MOTOR VEHICLES; ALLOWING THE SHERIFF TO REQUIRE  
13 SECURITY FOR COSTS INCURRED IN THE SEIZURE OF PROPERTY UNDER  
14 AN ORDER FOR CLAIM AND DELIVERY; AMENDING SECTIONS  
15 7-4-2511, 7-4-2512, 25-13-402, 25-13-404, 25-13-701,  
16 61-12-401 THROUGH 61-12-403, 61-12-407, AND 71-3-1203, MCA;  
17 AND PROVIDING AN EFFECTIVE DATE."

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 Section 1. Section 7-4-2511, MCA, is amended to read:

21 "7-4-2511. Collection and disposal of fees. (1) Each  
22 salaried county officer must charge and collect for the use  
23 of his county and pay into the county treasury on-the--first  
24 Monday by the 10th day in each month all fees now or  
25 hereafter allowed by law, paid or chargeable in all cases,

1 except as provided in 25-10-403. Nothing in this subsection  
2 applies to the compensation received by the sheriff as  
3 mileage while in the performance of official duties or for  
4 the board of prisoners or other persons while in his  
5 custody.

6 (2) No salaried county officer may receive for his own  
7 use any fees, penalties, or emoluments of any kind, except  
8 the salary as provided by law, for any official service  
9 rendered by him. Unless otherwise provided, all fees,  
10 penalties, and emoluments of every kind collected by a  
11 salaried county officer are for the sole use of the county  
12 and must be accounted for and paid to the county treasurer  
13 as provided by subsection (1) and credited to the general  
14 fund of the county."

15 Section 2. Section 7-4-2512, MCA, is amended to read:

16 "7-4-2512. Statement and affidavit of fees collected.

17 (1) The fees and compensation collected and chargeable for  
18 the use of the county in each month must be paid to the  
19 county treasurer on-the-first-Monday by the 10th day of the  
20 following month and must be accompanied by a statement and  
21 copy of the fee book for the preceding month, duly verified  
22 by the officer making the payment.

23 (2) The affidavit must be in the following form:

24 State of Montana

25 County of ....

1 I, ...., of the county of ...., do swear that the fee  
 2 book in my office contains a true statement in detail of all  
 3 fees and compensations of every kind and nature for official  
 4 services rendered by me, paid or chargeable, or by my  
 5 deputies or assistants for the month of ...., 19.., and that  
 6 this fee book shows the full amount received or chargeable  
 7 in said month and since my last monthly payment; and neither  
 8 myself nor, to my knowledge or belief, any of my deputies or  
 9 assistants have rendered any official service, except for  
 10 the county or state, which is not fully set out in this fee  
 11 book; and that the foregoing statement is a full, true, and  
 12 correct copy thereof.

13 ..... (Signature)

14 Subscribed and sworn to before me this ... day of .....,  
 15 19...

16 Seal ..... (Person authorized to take oaths)

17 ..... (Title or notarial information)"

18 SECTION 3. SECTION 25-13-402, MCA, IS AMENDED TO READ:

19 "25-13-402. How writ executed. The sheriff must  
 20 execute the writ against the property of the judgment debtor  
 21 no later than 60 days after receipt of the writ by levying  
 22 on a sufficient amount of property, if there be sufficient,  
 23 collecting or selling the things in action, and selling the  
 24 other property and paying to the plaintiff or his attorney  
 25 so much of the proceeds as will satisfy the judgment. Any

1 excess in the proceeds over the judgment and accruing costs  
 2 must be returned to the judgment debtor unless otherwise  
 3 directed by the judgment or order of the court. When there  
 4 is more property of the judgment debtor than is sufficient  
 5 to satisfy the judgment and accruing costs within the view  
 6 of the sheriff, he must levy only on such part of the  
 7 property as the judgment debtor may indicate if the property  
 8 indicated be amply sufficient to satisfy the judgment and  
 9 costs."

10 Section 4. Section 25-13-404, MCA, is amended to read:

11 "25-13-404. Return of the execution. (1) Except as  
 12 provided in subsection subsections (2) and (3), execution  
 13 may be made returnable to the clerk of the court in which  
 14 the judgment was rendered, at any time not less than 10 or  
 15 more than 60 days after its receipt of the recovery by the  
 16 sheriff following imposition of levy, to-the-clerk-of-the  
 17 court-in-which-the-judgment--was--rendered as provided in  
 18 25-13-402.

19 (2) The writ of execution issued by the county  
 20 treasurer under 15-16-401 may be made returnable, at any  
 21 time not less than 10 or more than 90 days after its receipt  
 22 by the sheriff, to the county treasurer of the county in  
 23 which the writ was issued.

24 (3) In compliance with the provisions of subsection  
 25 (1) and in lieu of returning the writ of execution to the



1 clerk of the court, the sheriff may enclose his return of  
2 the writ in an envelope to the officer, agent, or attorney  
3 who sent it and deposit it in the post office, prepaying the  
4 postage."

5 Section 5. Section 25-13-701, MCA, is amended to read:  
6 "25-13-701. Notice of sale on execution. (1) Before  
7 the sale of the property on execution, notice thereof must  
8 be given as follows:

9 (a) in case of perishable property, by posting written  
10 notice of the time and place of the sale in three public  
11 places of in the township-or-city county where the sale is  
12 to take place, for such time as may be reasonable  
13 considering the character and condition of the property;

14 (b) in case of other personal property, by posting a  
15 similar notice in three public places in the township--or  
16 city county where the sale is to take place, for not less  
17 than 5 days or more than 10 days, and by publishing a copy  
18 of the notice at least 1 week before the sale in a newspaper  
19 of general circulation published in the county, if there be  
20 one;

21 (c) in case of real property, by posting a similar  
22 notice, particularly describing the property, for 20 days in  
23 three public places of in the township-or-city county where  
24 the property is situated and also where the property is to  
25 be sold, which may be either at the courthouse or on the

1 premises, and publishing a copy thereof once a week for the  
2 same period in some newspaper published in the county, if  
3 there be one, which notice shall be substantially as  
4 follows:

5 SHERIFF'S SALE  
6 ..... , Plaintiff,  
7 vs.  
8 ..... , Defendant,

9 To be sold at sheriff's sale on the .... day of ....,  
10 19.., at ..... (Here insert brief description of  
11 property.)

12 Signed ..... , Sheriff

13 (2) Any sheriff publishing a notice not in accordance  
14 with the form set forth in subsection (1)(c) and which shall  
15 cost more than such a notice shall not be entitled to any  
16 costs for publication of the same but shall be personally  
17 liable for the payment of such publication."

18 Section 6. Section 61-12-401, MCA, is amended to read:

19 "61-12-401. Taking vehicle into custody. (1) The  
20 following law enforcement agencies may take into custody any  
21 motor vehicle found abandoned for a period of 48 hours or  
22 more on any public highway, or for a period of 5 days or  
23 more on any city street, public property, or private  
24 property:

25 (a) the Montana highway patrol if the vehicle is upon

1 the right-of-way of any public highway other than a county  
2 road;

3 (b) the sheriff of the county if the vehicle is upon  
4 the right-of-way of any county road within the county;

5 (c) the city police if the vehicle is upon a city  
6 street within the city.

7 (2) The Montana highway patrol, sheriff of the county,  
8 or the city police may use its or his personnel, equipment,  
9 and facilities for the removal and preservation storage of  
10 the vehicle, or may hire other personnel, equipment, and  
11 facilities for those purposes.

12 (3) At the request of the owner or person in lawful  
13 possession or control of the private property, the sheriff  
14 of the county in which the vehicle is located or the city  
15 police of the city in which the vehicle is located may  
16 remove and hold it in the manner and upon the conditions  
17 provided in subsections (1) and (2)."

18 Section 7. Section 61-12-402, MCA, is amended to read:

19 "61-12-402. Notice to owner. (1) Within 72 hours after  
20 any vehicle is removed and held by or at the direction of  
21 the Montana highway patrol, the highway patrol shall notify  
22 the sheriff of the county in which the vehicle was located  
23 at the time it was taken into custody and the place where  
24 the vehicle is being held. In addition the Montana highway  
25 patrol shall furnish the sheriff a complete description of

1 the vehicle to include year, make, model, serial number, and  
2 license number if available, any costs incurred to that date  
3 in the removal, preservation storage, and custody of the  
4 vehicle, and any available information concerning its  
5 ownership.

6 (2) The sheriff or the city police shall make  
7 reasonable efforts to ascertain the name and address of the  
8 owner, lienholder, or person entitled to possession of the  
9 vehicle taken into custody under 61-12-401. If such name and  
10 address are ascertained, the sheriff or the city police  
11 shall notify such owner and lienholder or person of the  
12 location of the vehicle.

13 (3) If the vehicle is registered in the office of the  
14 department, notice shall be deemed given when a registered  
15 or certified letter addressed to the registered owner of the  
16 vehicle and lienholder, if any, at the latest address shown  
17 by the records in the office of the department, return  
18 receipt requested and postage prepaid thereon, is mailed at  
19 least 30 days before the vehicle is sold as hereinafter  
20 provided.

21 (4) If the identity of the last registered owner  
22 cannot be determined, or if the registration contains no  
23 address for the owner, or if it is impossible to determine  
24 with reasonable certainty the identity and addresses of all  
25 lienholders, notice by one publication in one newspaper of

1 general circulation in the county where the motor vehicle  
 2 was abandoned shall be sufficient to meet all requirements  
 3 of notice pursuant to this part. Such notice by publication  
 4 can contain multiple listings of abandoned vehicles. Any  
 5 such notice shall be ~~within-the-time-requirements-prescribed~~  
 6 ~~for-notice-by-certified-or-registered-mail--and--shall--have~~  
 7 ~~the--same--contents--required--for--a-notice-by-certified-or~~  
 8 ~~registered-mail~~ provided in the same manner as prescribed in  
 9 25-13-701(1)(b).

10 (5) If the abandoned vehicle is in the possession of a  
 11 motor vehicle wrecking facility licensed under 75-10-511,  
 12 the wrecking facility may make the required search to  
 13 ascertain the name and address of the owner, lienholder, or  
 14 person entitled to possession of the vehicle and shall give  
 15 the notices required in subsections (2) through (4). The  
 16 wrecking facility shall deliver to the sheriff or the city  
 17 police a certificate describing the efforts made to  
 18 ascertain the name and address of the owner, lienholder, or  
 19 person entitled to possession of the vehicle and shall  
 20 deliver to the sheriff or the city police proof of the  
 21 notice given.

22 (6) A vehicle found by law enforcement officials to be  
 23 a "junk vehicle" as defined by 75-10-501 and certified as  
 24 having an appraised value of \$100 or less as determined by  
 25 the county assessor in accordance with the rules of the

1 department of revenue may be directly submitted for disposal  
 2 in accordance with the provisions of part 5 of chapter 10,  
 3 Title 75, upon a release given by the sheriff or the city  
 4 police. In the release the sheriff or the city police shall  
 5 include a description of the vehicle including year, make,  
 6 model, serial number, and license number if available. A  
 7 release provided by the sheriff or the city police under  
 8 this section shall be transmitted to the motor vehicle  
 9 wrecking facility and shall be considered by that facility  
 10 to meet the requirements for records under 75-10-512 and  
 11 75-10-513. Vehicles described in this section may be  
 12 submitted without notice and without a required holding  
 13 period."

14 Section 8. Section 61-12-403, MCA, is amended to read:

15 "61-12-403. Reclaiming vehicle. The owner, lienholder,  
 16 or person entitled to possession of the vehicle may reclaim  
 17 it at any time after it is taken into custody and before it  
 18 is sold. He shall present to the sheriff of the county or  
 19 the city police of the city in which the vehicle was located  
 20 at the time it was taken into custody satisfactory proof of  
 21 ownership or right to possession, and pay the costs and  
 22 expenses incurred in the removal, preservation storage, and  
 23 custody of the vehicle. He shall not be required to pay  
 24 storage charges for a period longer than 90 days."

25 Section 9. Section 61-12-407, MCA, is amended to read:

1 "61-12-407. Transmitting return of sale and balance of  
 2 proceeds. (1) When any vehicle is sold as provided in  
 3 61-12-404 the sheriff or the city police shall transmit to  
 4 the department and to the county treasurer or to the city  
 5 treasurer, respectively, a return of sale setting forth a  
 6 description of the vehicle, the purchase price, the name and  
 7 address of the purchaser, the costs incurred in the sale,  
 8 and the costs and expenses incurred in the removal,  
 9 preservation storage, and custody of the vehicle.

10 (2) With the return of sale, the sheriff shall  
 11 transmit to the county treasurer or the city police shall  
 12 transmit to the city treasurer the balance of the proceeds  
 13 of the sale after deducting the costs incurred in the sale  
 14 and the costs and expenses incurred in the removal,  
 15 preservation storage, and custody of the vehicle.

16 (3) Upon receipt of the return of sale and such  
 17 balance from:

18 (a) the county sheriff, the county treasurer shall  
 19 file the return in his office and deposit the balance in the  
 20 county road fund on all vehicles seized by the sheriff or  
 21 highway patrol; or

22 (b) the city police, the city treasurer shall file the  
 23 return in his office and deposit the balance in the city  
 24 street fund on all vehicles seized by the city police."

25 Section 10. Section 71-3-1203, MCA, is amended to

1 read:

2 "71-3-1203. Enforcement of lien -- sale. If payment  
 3 for such work, labor, feed, or services or material  
 4 furnished is not made within 30 days after the performance  
 5 or furnishing of the same, the person entitled to a lien  
 6 under the provisions of this section may enforce said lien  
 7 in the following manner:

8 (1) He shall deliver to the sheriff or a constable of  
 9 the county in which the property is located a statement of  
 10 the amount of his claim against said property, a description  
 11 of the property, and the name of the owner thereof or of the  
 12 person at whose request the work, labor, or services were  
 13 performed or the materials furnished.

14 (2) Upon receipt of such statement, the sheriff or  
 15 constable shall proceed to advertise and sell at public  
 16 auction so much of the property covered by said lien as will  
 17 satisfy same.

18 (3) Such sale shall be advertised, conducted, and held  
 19 in the same manner as ~~provided--by--law--for--the--sale--of~~  
 20 ~~mortgaged--personal--property--by--sheriffs--Such--notice--shall~~  
 21 ~~be--given--for--not--less--than--5--or--more--than--10--days--prior--to~~  
 22 ~~the--date--of--sale~~ prescribed in 25-13-701(1)(b).

23 (4) The proceeds of the sale shall be applied by the  
 24 sheriff to the discharge of the lien and the cost of the  
 25 proceedings in selling the property and enforcing the lien,

1 and the remainder, if any, or such part as is required to  
 2 discharge the claims, shall be turned over by the sheriff to  
 3 the holders, in the order of their precedence, of the  
 4 chattel mortgages or other lien claimants of record against  
 5 said property, and the balance of the proceeds shall be  
 6 turned over to the owner of the property.

7 (5) However, before making seizure of any property  
 8 under the provisions of this section, the sheriff may  
 9 require an indemnity bond from the lienor in that may not to  
 10 exceed double the amount of the claim against said property,  
 11 said bond and the surety or sureties thereon to be approved  
 12 by said sheriff."

13 NEW SECTION. Section 11. Security for sheriff's costs  
 14 when property seized. If the sheriff will incur substantial  
 15 costs in transporting, keeping, or storing the property  
 16 seized, the party requesting service of an order for claim  
 17 and delivery shall provide a bond or other security to pay  
 18 for all costs that may be incurred as a result of the  
 19 service of such order.

20 NEW SECTION. Section 12. Codification instruction.  
 21 Section ~~10~~ 11 is intended to be codified as an integral part  
 22 of Title 27, chapter 17, part 2, and the provisions of Title  
 23 27, chapter 17, part 2, apply to section ~~10~~ 11.

24 NEW SECTION. Section 13. Coordination instruction. If  
 25 this bill and Senate Bill No. 16, including the section of

1 that bill amending 71-3-1203(3), are passed and approved,  
 2 the amendment in Senate Bill No. 16 to 71-3-1203(3) is void.  
 3 NEW SECTION. Section 14. Effective date. Sections 1  
 4 and 2 and this section are effective July 1, 1987.

-End-