

SENATE BILL 44

Introduced by Halligan

12/23	Introduced
12/23	Referred to Local Government
1/04	First Reading
1/04	Fiscal Note Requested
1/11	Fiscal Note Received
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1/11	Fiscal Note Printed (Sic)
2/11	Tabled in Committee

## SENATE BILL NO. 44

INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS; ESTABLISHING A HEARING COMMITTEE AND HEARING PROCEDURES; PROHIBITING DISCLOSURE OF CERTAIN PERSONAL INFORMATION; PROVIDING FOR AN APPEAL FROM THE HEARING COMMITTEE DECISION; PROVIDING FOR SUMMARY PUNISHMENT; PROHIBITING RETALIATION AGAINST AN OFFICER EXERCISING RIGHTS; AMENDING SECTIONS 7-32-2105, 7-32-4152, AND 7-32-4153, MCA; AND REPEALING SECTIONS 7-32-107, 7-32-108, 7-32-109, 7-32-110, 7-32-2108, 7-32-2109, 7-32-2110, 7-32-4155, 7-32-4156, 7-32-4157, 7-32-4158, 7-32-4160, 7-32-4161, 7-32-4162, 7-32-4163, 7-32-4164, 44-1-701, 44-1-702, 44-1-703, 44-1-704, 44-1-705, 44-1-801, 44-1-802, 44-1-803, 44-1-804, 44-1-805, 44-1-806, 44-1-807, 44-1-808, 44-1-901, 44-1-902, 44-1-903, AND 44-1-910, MCA."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 12] may be cited as the "Law Enforcement Officers' Bill of Rights".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 12], the following definitions apply:

(1) "Disciplinary action" means the suspension,

demotion, dismissal, transfer, reassignment, or other action that might result in loss of pay or benefits or that might otherwise be considered a punitive measure taken against a law enforcement officer.

(2) "Hearing committee" means the committee established in [section 5] to hold a hearing on a complaint against a law enforcement officer.

(3) "Law enforcement agency" has the meaning as defined in 44-11-303.

(4) "Law enforcement officer" means a person who is a peace officer as defined in 46-1-202.

NEW SECTION. Section 3. Rights of law enforcement officers while under investigation -- conduct of investigation and interrogation. (1) Except as provided in [section 10], whenever a law enforcement officer is under investigation or is subject to interrogation by members of a law enforcement agency for any reason that could lead to disciplinary action, the investigation or interrogation must be conducted under the following conditions:

(a) The interrogation must be conducted at a reasonable hour, preferably at a time when the law enforcement officer is on duty.

(b) The interrogation must take place at an office within the law enforcement agency that was previously designated for that purpose.

1 (c) The law enforcement officer under interrogation  
2 must be informed of the name, rank, and command of the  
3 officer in charge of the interrogation, the interrogating  
4 officer, and all persons present during the interrogation.  
5 Questions directed to the officer under interrogation must  
6 be asked by and through one interrogator.

7 (d) A complaint against a law enforcement officer may  
8 not be brought before a hearing committee unless the  
9 complaint is sworn to before an official authorized to  
10 administer oaths.

11 (e) The law enforcement officer under investigation  
12 must be informed in writing of the nature of the complaint  
13 prior to any interrogation and must be informed of the names  
14 of all complainants and witnesses.

15 (f) Interrogation sessions of a law enforcement officer  
16 must be for reasonable periods and must allow for reasonable  
17 periods for the rest and personal necessities of the law  
18 enforcement officer.

19 (g) The law enforcement officer under interrogation may  
20 not be subjected to offensive language, be harassed, or be  
21 threatened with disciplinary action.

22 (h) A complete record, transcribed by a court  
23 stenographer, must be kept of the complete proceedings  
24 before the hearing committee, including all recess periods.  
25 A copy of the record must be available to the officer or the

1 officer's counsel upon request.

2 (i) If a law enforcement officer under interrogation is  
3 under arrest, the officer must be informed of all rights  
4 prior to the beginning of the interrogation.

5 (j) At the request of the law enforcement officer under  
6 interrogation, the officer has the right to be represented  
7 by counsel of the officer's choice. The officer's counsel  
8 must be present at all times during the interrogation. The  
9 interrogation must be suspended for a reasonable time until  
10 representation can be obtained.

11 (k) A public statement may not be made prior to a  
12 decision being rendered by the hearing committee. A public  
13 statement may not be made if the investigation does not  
14 result in a recommendation of disciplinary action unless the  
15 officer requests a public statement. This subsection (k)  
16 does not apply to a public statement made by the officer.

17 (1) A law enforcement officer may not be compelled to  
18 speak or testify before or be questioned by a  
19 nongovernmental agency.

20 (2) The state may not abridge and a law enforcement  
21 agency may not adopt a regulation that prohibits the right  
22 of a law enforcement officer to bring suit arising out of  
23 the officer's duties as a law enforcement officer.

24 (3) A law enforcement agency may not insert adverse  
25 material into the file of a law enforcement officer unless

the officer has an opportunity to review and receive a copy of the material in writing. A law enforcement officer may waive these rights in writing.

**NEW SECTION. Section 4. Right to hearing.** (1) If an investigation of a law enforcement officer results in a recommendation of disciplinary action, the law enforcement agency shall, before taking the action, notify the officer that the officer is entitled to a hearing on the issues by the hearing committee provided for in [section 5].

(2) The notice must state the time and place of the hearing and the issues involved. An official record, including testimony and exhibits, must be kept of the hearing.

(3) The law enforcement officer may be relieved of duty but must receive all ordinary pay and benefits the officer would have received if the officer were not the subject of the hearing.

**NEW SECTION. Section 5. Hearing committee -- membership.** (1) A hearing committee is composed of three active law enforcement officers, other than chiefs of police, from within the state of Montana who have had no part in the investigation or interrogation of the law enforcement officer who is the subject of the hearing. The committee is composed of:

(a) one member selected by the chief or the

highest-ranking officer of the law enforcement agency;

(b) one member selected by the aggrieved officer; and

(c) one member selected by the other two members.

(2) In the event that the other two members are unable to agree on a third member within 10 days, the two members shall apply to the district court where the law enforcement agency is located and the district court judge shall appoint a law enforcement officer as the third member.

(3) Upon application, the district court judge may appoint legal counsel to assist the hearing committee.

(4) Except as provided in subsection (5), the law enforcement agency and the officer under investigation are each responsible to pay 50% of the legal fee of the appointed legal counsel for the hearing committee.

(5) Upon motion by either party, the district court judge may make a different disposition as to what each party is required to pay toward the appointed legal counsel's fee.

**NEW SECTION. Section 6. Conduct of hearing -- evidence -- production of documents -- witnesses -- fees.** (1) The hearing provided for in [section 4] must be conducted by the hearing committee. The law enforcement agency and the officer may be represented by counsel at the hearing. Each party must be given ample opportunity to present evidence and argument with respect to the issues involved.

(2) Evidence that possesses probative value is

1 admissible and must be given probative effect. The hearing  
 2 committee shall follow the provisions of Rule 501, Montana  
 3 Rules of Evidence, and Title 26, chapter 1, part 8, and may  
 4 exclude incompetent, irrelevant, immaterial, and unduly  
 5 repetitious evidence. All records and evidence that a party  
 6 intends to use must be offered and be made part of the  
 7 record.

8 (3) Either party may cross-examine the witnesses who  
 9 testify and may submit rebuttal evidence. Witness fees and  
 10 mileage, if claimed, must be allowed in the same manner as  
 11 for testimony in district court. Fees, mileage, and the  
 12 actual expenses incurred in securing the attendance and  
 13 testimony of witnesses must be itemized and must be paid by  
 14 the law enforcement agency if disciplinary action is not  
 15 taken against the officer.

16 NEW SECTION. **Section 7. Disclosure of certain personal**  
 17 **information prohibited.** A law enforcement officer may not be  
 18 required to disclose any item of the officer's property,  
 19 income, assets, sources of income, debts, or personal or  
 20 domestic expenditures, including those of any member of the  
 21 officer's family or household, unless that information is  
 22 necessary in investigating a possible conflict of interest  
 23 with respect to the performance of the officer's duties or  
 24 unless disclosure is required by law.

25 NEW SECTION. **Section 8. Decision of hearing committee.**

1 (1) The hearing committee may sustain, modify in whole or in  
 2 part, or reverse the recommendation of the law enforcement  
 3 agency.

4 (2) The decision, order, or action taken as a result of  
 5 the hearing must be specified in writing. Any decision or  
 6 order must be accompanied by findings of fact and  
 7 conclusions. The findings must be a concise statement on  
 8 each issue in the hearing. A copy of the decision or order  
 9 and accompanying findings and conclusions, along with  
 10 written recommendations for action, must be delivered or  
 11 mailed promptly to the law enforcement officer or the  
 12 officer's counsel.

13 NEW SECTION. **Section 9. Appeal from hearing committee**  
 14 **decision.** (1) Except as provided in subsection (2), a  
 15 decision of the hearing committee must be appealed to the  
 16 district court within 30 days from the date of the decision.

17 (2) A city or town may seek review of the final  
 18 decision of the hearing committee by writ of certiorari to  
 19 the supreme court on the grounds that the decision was  
 20 arbitrary or capricious or characterized by abuse of  
 21 discretion or error of law. Upon filing with the clerk of  
 22 the supreme court a petition within 20 days of the decision,  
 23 the supreme court may issue a writ of certiorari to the  
 24 hearing committee to certify to the supreme court the record  
 25 of the proceedings in the case, together with any transcript

of the proceedings.

**NEW SECTION. Section 10. Summary punishment -- appeal -- emergency suspension.** (1) The provisions of [sections 1 through 12] are not intended to prohibit the following summary punishment by the highest-ranking officer of the law enforcement agency.

(2) Summary punishment of 2 days' suspension without pay may be imposed by the highest-ranking officer of the law enforcement agency for minor violations of departmental rules and regulations when the facts that constitute the minor violation are not in dispute. If the aggrieved officer believes that the punishment is unreasonable, the officer may appeal the punishment to a hearing committee.

(3) An emergency suspension may be imposed by the highest-ranking officer of the law enforcement agency when it appears that it is in the best interests of the public. An emergency suspension of a law enforcement officer consists of the officer being relieved of duty but receiving the ordinary pay and benefits that the officer would have received if not suspended.

(4) A suspended law enforcement officer is entitled to a prompt hearing before a hearing committee upon request. The hearing must be held within 14 days of the request. If, after the hearing, the hearing committee suspends or dismisses the officer, the officer is not entitled to pay or

benefits unless reinstated by a subsequent hearing.

(5) A law enforcement officer who is charged with a felony or who is convicted of and incarcerated for a misdemeanor or felony must be suspended without pay and without benefits except for medical benefits and insurance.

(6) If the officer is acquitted, the officer must be reinstated and reimbursed immediately for all salary and benefits that have not been paid during the suspension period.

**NEW SECTION. Section 11. Retaliation for exercising rights.** (1) A law enforcement officer may not be discharged; demoted; disciplined; denied promotion, transfer, or reassignment; or otherwise discriminated against with regard to employment for the exercise of the officer's rights granted by [sections 1 through 12].

(2) A law enforcement officer who is denied any right afforded by [sections 1 through 12] may apply, either individually or through the officer's certified or recognized employee organization, to the district court where the officer resides or is regularly employed for an order directing the law enforcement agency to show cause why the right should not be afforded.

**NEW SECTION. Section 12. Exclusivity of remedy.** The remedies contained in [sections 1 through 12] are the exclusive remedies for all law enforcement officers subject

to the provisions of [sections 1 through 12].

**Section 13.** Section 7-32-2105, MCA, is amended to read:

"7-32-2105. Probationary period for deputy sheriff. Any A person whose term of employment as a deputy sheriff commences subsequent to March 2, 1967, shall serve a 1-year probationary period, and during this 1-year period the employment of ~~any-such~~ the deputy may be terminated by the sheriff with or without cause and without recourse to the sheriff under the terms of 7-32-2104 through ~~7-32-2110~~ 7-32-2107."

**Section 14.** Section 7-32-4152, MCA, is amended to read:

"7-32-4152. Term and compensation of members of police commission. (1) The appointees to the police commission shall hold office for 3 years, and one ~~such~~ member must be appointed annually at the first regular meeting of the city council or commission in May of each year. ~~However, a member serving on the commission during the hearing or deciding of a case under 7-32-4155 shall continue to serve on the commission for that case until a decision has been made; a new member may not sit on the commission for such business.~~

(2) The compensation of the members of ~~such~~ the board ~~shall~~ must be fixed by the city council or commission, not to exceed \$10 per day or more than \$50 per month for any month for each member in cities of the first and second class."

**Section 15.** Section 7-32-4153, MCA, is amended to read:

"7-32-4153. Meaning of word mayor. Wherever the word "mayor" is used in 7-32-4109 ~~and 7-32-4160 through 7-32-4163~~, it is intended to include "city manager", "city commissioner", or any other name or designation used to identify or designate the chief executive of any city or municipality."

**NEW SECTION. Section 16. Repealer.** Sections 7-32-107,

7-32-108, 7-32-109, 7-32-110, 7-32-2108, 7-32-2109, 7-32-2110, 7-32-4155, 7-32-4156, 7-32-4157, 7-32-4158, 7-32-4160, 7-32-4161, 7-32-4162, 7-32-4163, 7-32-4164, 44-1-701, 44-1-702, 44-1-703, 44-1-704, 44-1-705, 44-1-801, 44-1-802, 44-1-803, 44-1-804, 44-1-805, 44-1-806, 44-1-807, 44-1-808, 44-1-901, 44-1-902, 44-1-903, and 44-1-910, MCA, are repealed.

**NEW SECTION. Section 17. Codification instruction.**

[Sections 1 through 12] are intended to be codified as an integral part of Title 44, chapter 1, and the provisions of Title 44, chapter 1, apply to [sections 1 through 12].

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0044, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating a law enforcement officers' bill of rights and establishing a hearing committee and hearing procedures.

ASSUMPTIONS:

1. The Department of Justice will have two additional discipline review hearings each year. Each hearing will cost \$3,000 (transcription, legal counsel/hearings officer, travel).
2. The fiscal impact on other state agencies employing law enforcement officers is assumed to be minimal.
3. The potential fiscal impact on local government law enforcement agencies in legal fees, witness fees, travel reimbursement, and other expenses is not subject to reasonable estimate.

FISCAL IMPACT:

Expenditures: Department of Justice: Highway Patrol Division

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Operating Expenses	2,391,327	2,397,327	6,000	2,446,871	2,452,871	6,000
Highways Special Revenue (02)	2,391,327	2,397,327	6,000	2,446,871	2,452,871	6,000

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The potential fiscal impact on local government law enforcement agencies is unknown.

Dave Lewis 1-9-93  
DAVE LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

Mike Halligan 1-11-93  
MIKE HALLIGAN, PRIMARY SPONSOR DATE  
Fiscal Note for SB0044, as introduced

SB 44