Montana State Legislature

Exhibit Number: 8

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EXHIBIT 8
DATE 3-23-05
SB 370

SB370 – PROPOSED AMENDMENT 2

Clarifying the coverage group, clarifying individual applicability.

OPTION A (adult facility detention officers only):

(2) "~~Detention~~ PROFESSIONAL DETENTION officer" means any detention officer, as defined in 44-4-302, who is ~~hired by a sheriff, employed in a detention center, and acting as a detention officer, for the sheriff and who has received or is expected to receive training to meet the employment standards set by the board of crime control pursuant to 44-4-301 for detention officers.~~ EMPLOYED BY A COUNTY, AND WHOSE SOLE JOB FUNCTION, AUTHORITY AND RESPONSIBILITY IS MAINTAINING CUSTODY OF INMATES OF A DETENTION CENTER, TEMPORARY DETENTION CENTER OR DETENTION FACILITY, AND WHO HAS OR, WITHIN ONE YEAR OF SUCH EMPLOYMENT RECEIVES, DETENTION OFFICER BASIC CERTIFICATION FROM A TRAINING SCHOOL MEETING THE MINIMUM STANDARDS OF THE BOARD OF CRIME CONTROL PURSUANT TO 44-4-301.

(3) (a) Except as provided in subsection (3)(b), a PROFESSIONAL detention officer must become a member of the sheriffs' retirement system.

(b) ~~A detention officer who was a~~ AN ACTIVE member of the public employees' retirement system WHO IS A PROFESSIONAL DETENTION OFFICER AND WAS A PROFESSIONAL DETENTION OFFICER on [the effective date of this act] may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board before May 1, 2006. A WRITTEN ELECTION RECEIVED BY THE BOARD PRIOR TO THE 15TH DAY OF THE MONTH WILL BE EFFECTIVE THE FIRST DAY OF THE FOLLOWING MONTH.

(3) After [the effective date of this act], a PROFESSIONAL detention officer is not eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to PROFESSIONAL detention officers, except as provided in 19-7-301.

HB370 – PROPOSED AMENDMENT 2

OPTION B (adult and juvenile facility detention officers):

(2) "~~Detention~~ PROFESSIONAL DETENTION officer" means any detention officer OR JUVENILE DETENTION OFFICER, as defined in 44-4-302, who is ~~hired by a sheriff, employed in a detention center, and acting as a detention officer, for the sheriff and who has received or is expected to receive training to meet the employment standards set by the board of crime control pursuant to 44-4-301 for detention officers.~~ EMPLOYED BY A COUNTY, AND WHOSE SOLE JOB FUNCTION, AUTHORITY AND RESPONSIBILITY IS MAINTAINING CUSTODY OF INMATES OF A DETENTION CENTER, TEMPORARY DETENTION CENTER OR DETENTION FACILITY OR MAINTAINING CUSTODY OF JUVENILES IN A JUVENILE DETENTION CENTER OR DETENTION FACILITY, AND WHO HAS, OR WITHIN ONE YEAR OF SUCH EMPLOYMENT RECEIVES, DENTENTION OFFICER BASIC CERTIFICATION OR JUVENILE DETENTION OFFICER BASIC CERTIFICATION FROM A TRAINING SCHOOL MEETING THE MINIMUM STANDARDS OF THE BOARD OF CRIME CONTROL PURSUANT TO 44-4-301.

(3) (a) Except as provided in subsection (3)(b), a PROFESSIONAL detention officer must become a member of the sheriffs' retirement system.

(b) ~~A detention officer who was a~~ AN ACTIVE member of the public employees' retirement system WHO IS A PROFESSIONAL DETENTION OFFICER AND WAS A PROFESSIONAL DETENTION OFFICER on [the effective date of this act] may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board before May 1, 2006. A WRITTEN ELECTION RECEIVED BY THE BOARD PRIOR TO THE 15TH DAY OF THE MONTH WILL BE EFFECTIVE THE FIRST DAY OF THE FOLLOWING MONTH.

(3) After [the effective date of this act], a PROFESSIONAL detention officer is not eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to PROFESSIONAL detention officers, except as provided in 19-7-301.

BOLD ADDED TO TEXT FOR EMPHASIS

-----Original Message-----
From: Horsfall, Allen
Sent: Monday, March 07, 2005 12:24 PM
To: Jenkins, Kelly
Cc: Mena, Roland (DOJ)
Subject: RE: Training Requirements

Kelly,

Thanks for your explanation. It is helpful. I will cc my response to my executive director since in a round about way I'm involving myself in legislation. He has asked that we keep him appraised of any such actions. Hope you don't mind..

My answer regarding the issue actually may not be of much help, but POST relies on the definition of a detention officer and correction officer where "push would come to shove" regarding the certification issue. In other words I would never force compliance with the minimum standards unless a person fit the statutory definition or was "registered" by their agency as such. The statutes, as you may know, require that all persons tracked by POST report the hire/termination of such employees within ten days of their hiring or termination. If they are reported to us as a detention/correction officer then they would naturally have to complete the requirements within the time-frames. **Each department unfortunately may report some those persons differently.**

For example, in Broadwater County we have some dispatchers that work as detention officers, and POST allows, where the department agrees this is the case, a dual certification. Most agencies separate public safety telecommunicators from detention. However, here's one example that dispatchers go to the basic dispatch school and the CDOB. **Furthermore and perhaps worse, is that I may not have all telecommunicators on the roles for detention from places like Broadwater County, unless the department identifies them as such. Then, there is the case where in some jurisdictions, dispatchers may perform functions that in other jurisdictions are performed by detention officer. I wouldn't know of these persons since the department wanted them certified as dispatchers, and they choose not to train them in detention. I think this happens fairly frequently where dispatchers search female inmates as a matter of routine, or where dispatchers serve meals, give medications, etc. to inmates where no full time detention officer is on duty.**

Several detention centers are administered by sworn officers. Missoula, Yellowstone, Cascade, etc are examples where the administrators may also follow a dual certification both in detention and in law enforcement. DOC often list its cooks, maintenance people, laundry persons, etc, as corrections officers and sends them to basic training. However, very few of the counties do that unless they actually have a direct responsibility to act as the statute defines detention/ correction officers. I would certainly not routinely impose the minimum standards on these people unless they were sent in for registration as a detention/correction officer by the hiring agency. Therefore POST Council would, in effect and for the most part, only enforce compliance where the department identified them as needing and requiring the training. If they did fit the definition, and the department had not registered them, and we found out, then we may proceed to require the training. In the case of corrections officer the "full time" requirement in definition would be my interpretation in the above case, but **in the detention officer definition the "part time" is an issue that we simply haven't had to address at this point. In other words, all employees of the detention Centers may not be registered as detention officers and therefore I would neither know of them nor would they necessarily be registered as such to require the training.** The same applies to any department. Missoula County for example, may list their agency people including dispatchers, detention officer, dispatchers, admin staff, etc., but only those who are sent in as peace officers, detention officers, telecommunicators, etc., would be tracked for certification purposes.

Hope this helps some in preparing your position.

Allen C. Horsfall, Jr.
P.O.S.T. Executive Director
Montana Board of Crime Control
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COUNTY SHERIFF DEPARTMENT

ADULT DETENTION ACTIVITY:

OVERVIEW

The Adult Detention Activity of the County Sheriff Department shows the expenses associated with the detention of individuals accused of a crime, convicted individuals awaiting sentencing, sentenced inmates awaiting transport and prisoners sentenced to the County Detention Center. The FY 05 Preliminary Budget includes 3 Detention Sergeants, 4 Detention Officers, 1 Training Officer and the transfer of a Lieutenant to the Administrator.

The following are the expenses for this department:

Public Safety Fund Expenditures:

County Sheriff Office – Detention Center

ACTIVITY	FY 2003 ACTUAL	FY 2004 BUDGET	FY 2004 YEAR END	FY 2005 REQUEST	FY 2005 PRELIMINARY BUDGET	FY 2005 FINAL BUDGET
LAW ENFORCEMENT ACTIVITY:						
Personnel	889,821	1,019,018	1,041,758	1,400,233	1,474,178	1,388,668
Operations	424,842	544,689	590,979	881,191	897,291	897,291
Debt	-0-	-0-	-0-	-0-	-0-	-0-
Capital Outlay	-0-	45,602	-0-	75,900	73,400	75,400
TOTAL	1,314,466	1,699,309	1,632,537	2,357,324	2,444,869	2,361,359
Employees: (FTE)	22.50	23.50	23.50	30.50	27.50	27.50

New Positions are funded for part of year. For FY 06 the County will have to fund 30 positions.

Capital Outlay – Transport Van $26,000; Computer software and hardware $47,400, $2,000 Vest Match.

The County Commission has approved, based on the recommendations of the Architect and Sheriff, $450,000 in improvements to the Detention Center. The funds for these improvements are coming from Capital Projects Budget. The money is shown as part of the Capital Projects Fund (4010).

FROM: Kelly Jenkins, PER Board General Counsel
DATE: March 17, 2005
RE: Detention Officer Training

There has been some confusion regarding the PER Board position on the definition of "detention officer" in SB 370.

Our primary concern is not that the Board of Crime Control does not have clear authority to require detention officer training. Our primary concern is that there is no statewide, uniform standard applied in determining who is required to receive training.

Employees in one county with part-time (sometimes considered to be the equivalent of occasional) detention officer duties might be considered by that county to be detention officers, be reported as such, and be required to take detention officer training. That would make that employee a mandatory Sheriffs' Retirement System (SRS) member. In another county, an employee with the same duties may not be considered a detention officer, may not be reported as such, and would not be required to take detention officer training. In that county, the employee would be a mandatory member of PERS, not allowed in SRS.

That poses a significant constitutional equal protection concern for the Public Employees' Retirement Board, which must administer the retirement systems uniformly. Less dire, but no less problematic, than constitutional concerns are the basic administrative difficulties caused by an imprecise definition. As a consequence, we will propose an amendment that restricts SRS membership under SB370 to employees whose only duties are as a detention officer.

The amendment will also delete language in the definition that the employee "has received or is expected to receive training to meet the employment standards set by the board of crime control pursuant to 44-4-301 for detention officers". This secondary amendment is made for two reasons: The "employment standards" (as that term is used in ARM 23.14.526, which lists criteria for obtaining the detention officer basic certification) do not require training, but only require that the employee meet the standards of ARM 23.14.525. Second, although that ARM 23.14.526 provides the "REQUIREMENTS FOR DETENTION OFFICER BASIC CERTIFICATE", there is no clear requirement, by rule or by statute, that such a certificate is necessary to be a detention officer. Without a clear requirement, the argument could be made that there is no training requirement necessary to meet the "employment standards" even if the employment standards were something other than the criteria listed in ARM 23.14.525. Consequently, we looked for a clear alternative requirement in 44-4-301. The only alternative that could not be challenged was the requirement that the training facility meet Board of Crime Control standards. So we inserted in the definition the following: "WHO HAS OR, WITHIN ONE YEAR OF SUCH EMPLOYMENT RECEIVES, DETENTION OFFICER BASIC CERTIFICATION FROM A TRAINING SCHOOL MEETING THE MINIMUM STANDARDS OF THE BOARD OF CRIME CONTROL PURSUANT TO 44-4-301."

By this analysis, I'm not intending to subvert the Board of Crime Control's authority to provide training for detention officers. The level of certainty in current statutory and administrative regulations may work for it. If the Board of Crime control needs additional clarity, it can approach the legislature in any session and get the necessary clarification, which would be immediately effective for all affected employees. Retirement systems are more difficult to correct. Once retirement system contract is in place, it is subject to constitutional provisions concerning impairment of contract. A change in the contract terms (such as the membership coverage terms) might be considered an unconstitutional impairment of contract for any employee prior to the change. We must be very careful in the initial implementation of a change as significant as that contained in SB370.

Allen Horsfall offered his opinion that "officers" in 44-4-301(3), MCA includes all the job categories listed in 44-4-301(2)(a).

I appreciate his input, but I have trouble with the certainty of that analysis for retirement purposes. I thought that the history of 44-4-301, MCA might shed some light on the use of the term "officer". This is what I've found:

Ch. 61, L.1973 (attached) is a bill entitled in relevant part "...Providing That the Board of Crime Control Shall Have the Authority to Establish Minimum Qualifying Standards for Employment of Peace Officers, Require Basic Training for such Officers...." The only substantive amendment of the legislation is an amendment to Section 82A-1207, R.C.M. 1947 (the precursor to 44-4-301, MCA), which states (bold added):

> The board shall have the authority to establish **minimum qualifying standards** for employment of **peace officers**, require **basic training** for **such officers**, establish minimum standards for equipment and procedures and for advanced in-service training for such officers and establish minimum standards for any law enforcement training schools administered by the state or any of its political subdivisions or agencies ....

Although the statute was limited to peace officers, it clearly distinguished between "minimum qualifying standards" and "basic training" (both of which were distinct from the minimum standards for training schools).

Ch. 345, L.1989 (attached) expanded on this authority. Ch. 345 was entitled, in relevant part "...AUTHORIZING THE BOARD TO ESTABLISH MINIMUM STANDARDS FOR EMPLOYMENT OF DETENTION OFFICERS AND DETENTION CENTER ADMINISTRATORS AND STANDARDS FOR DETENTION OFFICER TRAINING SCHOOLS...." Ch. 345 amended the above quoted portion of what was, by then 44-4-301, MCA (italics in original show the amended additions; bold added)