

HOUSE BILL NO. 80

INTRODUCED BY S. LAVIN

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF CORRECTIONS TO APPOINT CRIMINAL INVESTIGATORS AS PEACE OFFICERS; AMENDING SECTIONS 7-32-303, 19-8-301, AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 7-32-303, MCA, is amended to read:

**"7-32-303. Peace officer employment, education, and certification standards -- suspension or revocation -- penalty.** (1) For purposes of this section, unless the context clearly indicates otherwise, "peace officer" means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, ~~or~~ airport police officer, or department of corrections criminal investigator.

(2) A sheriff of a county, the mayor of a city, a board, a commission, or any other person authorized by law to appoint peace officers in this state may not appoint any person as a peace officer who does not meet the following qualifications plus any additional qualifying standards for employment promulgated by the Montana public safety officer standards and training council established in 2-15-2029:

(a) be a citizen of the United States;

(b) be at least 18 years of age;

(c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;

(e) be of good moral character, as determined by a thorough background investigation;

(f) be a high school graduate or have passed the general educational development test and been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;

(g) be examined by a licensed physician, who is not the applicant's personal physician, appointed by the



1 employing authority to determine if the applicant is free from any mental or physical condition that might adversely  
2 affect performance by the applicant of the duties of a peace officer;

3 (h) successfully complete an oral examination conducted by the appointing authority or its designated  
4 representative to demonstrate the possession of communication skills, temperament, motivation, and other  
5 characteristics necessary to the accomplishment of the duties and functions of a peace officer; and

6 (i) possess or be eligible for a valid Montana driver's license.

7 (3) At the time of appointment, a peace officer shall take a formal oath of office.

8 (4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written  
9 notice of the event must be given to the Montana public safety officer standards and training council by the  
10 employing authority.

11 (5) (a) Except as provided in subsections (5)(b) and (5)(c), it is the duty of an appointing authority to  
12 cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the  
13 initial appointment, an appropriate peace officer basic course certified by the Montana public safety officer  
14 standards and training council. Any peace officer appointed after September 30, 1983, who fails to meet the  
15 minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this  
16 subsection (5)(a) forfeits the position, authority, and arrest powers accorded a peace officer in this state.

17 (b) A peace officer who has been issued a basic certificate by the Montana public safety officer  
18 standards and training council and whose last date of employment as a peace officer was less than 36 months  
19 prior to the date of the person's present appointment as a peace officer is not required to fulfill the basic  
20 educational requirements of subsection (5)(a). If the peace officer's last date of employment as a peace officer  
21 was 36 or more but less than 60 months prior to the date of present employment as a peace officer, the peace  
22 officer may satisfy the basic educational requirements as set forth in subsection (5)(c).

23 (c) A peace officer referred to in subsection (5)(b) or a peace officer who has completed a basic peace  
24 officer's course that is taught by a federal, state, or United States military law enforcement agency and that is  
25 reviewed and approved by the Montana public safety officer standards and training council as equivalent with  
26 current training in Montana and whose last date of employment as a peace officer or member of the military law  
27 enforcement was less than 60 months prior to the date of present appointment as a peace officer may, within 1  
28 year of the peace officer's present employment or initial appointment as a peace officer within this state, satisfy  
29 the basic educational requirements by successfully completing a basic equivalency course administered by the  
30 Montana law enforcement academy. The prior employment of a member of the military law enforcement must

1 be reviewed and approved by the Montana public safety officer standards and training council. If the peace officer  
2 fails the basic equivalency course, the peace officer shall complete the appropriate basic equivalency course  
3 within 120 days of the date of the failure of the equivalency course.

4 (6) The Montana public safety officer standards and training council may extend the 1-year time  
5 requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing  
6 authority of the officer. The application must explain the circumstances that make the extension necessary.  
7 Factors that the council may consider in granting or denying the extension include but are not limited to illness  
8 of the peace officer or a member of the peace officer's immediate family, absence of reasonable access to the  
9 basic equivalency course, and an unreasonable shortage of personnel within the department. The council may  
10 not grant an extension to exceed 180 days.

11 (7) A peace officer who has successfully met the employment standards and qualifications and the  
12 educational requirements of this section and who has completed a 1-year probationary term of employment must,  
13 upon application to the Montana public safety officer standards and training council, be issued a basic certificate  
14 by the council, certifying that the peace officer has met all the basic qualifying peace officer standards of this  
15 state.

16 (8) It is unlawful for a person whose certification as a peace officer, detention officer, or detention center  
17 administrator has been revoked or suspended by the Montana public safety officer standards and training council  
18 to act as a peace officer, detention officer, or detention center administrator. A person convicted of violating this  
19 subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the  
20 county jail or by a fine not to exceed \$500, or both."

21

22 **Section 2.** Section 19-8-301, MCA, is amended to read:

23 **"19-8-301. Membership -- inactive vested members -- inactive nonvested members.** (1) Except as  
24 provided in 19-8-302, the following state peace officers must be covered under the game wardens' and peace  
25 officers' retirement system and, beginning on the first day of employment, must become and shall remain active  
26 members for as long as they are employed as peace officers:

27 (a) game wardens who are assigned to law enforcement in the department of fish, wildlife, and parks;

28 (b) motor carrier officers employed by the department of transportation;

29 (c) campus security officers employed by the university system;

30 (d) wardens and deputy wardens employed by the department of corrections;

- 1 (e) corrections officers employed by the department of corrections;  
2 (f) probation and parole officers employed by the department of corrections;  
3 (g) criminal investigators employed by the department of corrections;  
4 ~~(g)~~(h) stock inspectors and detectives employed by the department of livestock; and  
5 ~~(h)~~(i) drill instructors employed by the department of corrections.

6 (2) (a) An inactive member with at least 5 years of membership service is an inactive vested member  
7 and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this  
8 chapter.

9 (b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit,  
10 the lump-sum payment consists of only the member's accumulated contributions and not the employer's  
11 contributions.

12 (3) (a) An inactive member with less than 5 years of membership service is an inactive nonvested  
13 member and is not eligible for any benefits from the retirement system.

14 (b) An inactive nonvested member is eligible only for a refund of the member's accumulated  
15 contributions."

16

17 **Section 3.** Section 53-1-203, MCA, is amended to read:

18 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

19 (a) subject to subsection ~~(6)~~ (7), adopt rules necessary:

20 (i) to carry out the purposes of 41-5-125;

21 (ii) for the siting, establishment, and expansion of prerelease centers;

22 (iii) for the expansion of treatment facilities or programs previously established by contract through a  
23 competitive procurement process;

24 (iv) for the establishment and maintenance of residential methamphetamine treatment programs; and

25 (v) for the admission, custody, transfer, and release of persons in department programs except as  
26 otherwise provided by law;

27 (b) subject to the functions of the department of administration, lease or purchase lands for use by  
28 correctional facilities and classify those lands to determine those that may be most profitably used for agricultural  
29 purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown  
30 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the

1 persons confined in correctional facilities;

2 (c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community  
3 Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and  
4 maintain:

5 (i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole  
6 eligibility or discharge for release into the community, providing an alternative placement for offenders who have  
7 violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The  
8 centers shall provide a less restrictive environment than the prison while maintaining adequate security. The  
9 centers must be operated in coordination with other department correctional programs. This subsection does not  
10 affect the department's authority to operate and maintain prerelease centers.

11 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as  
12 provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for  
13 persons convicted of possession of methamphetamine. The department shall issue a request for proposals using  
14 a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

15 (d) use the staff and services of other state agencies and units of the Montana university system, within  
16 their respective statutory functions, to carry out its functions under this title;

17 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including  
18 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed  
19 in correctional facilities or programs;

20 (f) encourage the establishment of programs at the local and state level for the rehabilitation and  
21 education of felony offenders;

22 (g) administer all state and federal funds allocated to the department for youth in need of intervention  
23 and delinquent youth, as defined in 41-5-103, except as provided in 41-5-2012;

24 (h) collect and disseminate information relating to youth who are committed to the department for  
25 placement in a state youth correctional facility;

26 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed  
27 of the specific information, by category, related to youth in need of intervention and delinquent youth in  
28 out-of-home care facilities;

29 (j) provide funding for youth who are committed to the department for placement in a state youth  
30 correctional facility;

1 (k) administer youth correctional facilities;  
2 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and  
3 (m) use to maximum efficiency the resources of state government in a coordinated effort to:  
4 (i) provide for delinquent youth committed to the department; and  
5 (ii) coordinate and apply the principles of modern correctional administration to the facilities and programs  
6 administered by the department.

7 (2) The department may contract with private, nonprofit or for-profit Montana corporations to establish  
8 and maintain a residential sexual offender treatment program. If the department intends to contract for that  
9 purpose, the department shall adopt rules for the establishment and maintenance of that program.

10 (3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a  
11 contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit  
12 the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a  
13 contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit  
14 committee. The legislative audit division shall review the contract and make recommendations or comments to  
15 the legislative audit committee. The committee may make recommendations or comments to the department. The  
16 department shall respond to the committee, accepting or rejecting the committee recommendations or comments  
17 prior to entering into the contract.

18 (4) The department of corrections may enter into contracts with nonprofit corporations or associations  
19 or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on  
20 juvenile parole supervision.

21 (5) The department may contract with Montana corporations to operate a day reporting program as an  
22 alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015.  
23 The department shall adopt by rule the requirements for a day reporting program, including but not limited to  
24 requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance  
25 with any conditions of probation, such as drug testing.

26 (6) The department may appoint criminal investigators employed by the department as peace officers  
27 as defined in 46-1-202 to investigate alleged criminal violations committed by offenders incarcerated in, or by  
28 persons employed at, facilities or within programs operated by or under contract with the department. Criminal  
29 investigators appointed as peace officers by the department must meet the requirements of 7-32-303 and are  
30 subject to any additional standards for employment promulgated by the Montana public safety officer standards

1 and training council established in 2-15-2029.

2           ~~(6)(7)~~ Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the  
3 statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and  
4 expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants,  
5 restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited  
6 at any location without community support. The prerelease siting, establishment, and expansion must be subject  
7 to, and the rules must include, a reasonable mechanism for a determination of community support for or objection  
8 to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment,  
9 and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3."

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11           NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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