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SENATE BILL NO. 79
INTRODUCED BY R. LYNCH
BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT OF CORRECTIONS TO APPOINT CRIMINAL INVESTIGATORS FOR CERTAIN PURPOSES; AMENDING SECTION 7-32-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Appointment of criminal investigators.** (1) The director of the department of corrections may appoint criminal investigators with the authority to investigate alleged criminal violations by offenders incarcerated in or by persons employed by secure facilities, programs, or regional or private secure facilities operated by or under contract with the department of corrections.

(2) A criminal investigator appointed by the director of the department of corrections must:

- (a) be a person qualified by experience, training, and high professional competence in criminal investigation;
- (b) meet the requirements established in 7-32-303; and
- (c) meet any additional qualifying standards established by the Montana public safety officer standards and training council provided for in 2-15-2029.

(3) When an alleged criminal violation occurs outside secure facilities, programs, or regional or private secure facilities operated by or under contract with the department of corrections, a criminal investigator appointed pursuant to subsection (1) shall obtain authorization from the county sheriff of the jurisdiction where the alleged criminal violation occurred to conduct an investigation.

Section 2. 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

1 officer" means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park
2 ranger, campus security officer, department of corrections criminal investigator, or airport police officer.

3 (2) A sheriff of a county, the mayor of a city, a board, a commission, or any other person
4 authorized by law to appoint peace officers in this state may not appoint a person as a peace officer who does
5 not meet the qualifications provided in this subsection (2) plus any additional qualifying standards for
6 employment promulgated by the Montana public safety officer standards and training council established in 2-
7 15-2029. A peace officer must:

8 (a) be a citizen of the United States;

9 (b) be at least 18 years of age;

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

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

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

15 (f) be a high school graduate or have been issued a high school equivalency diploma by the
16 superintendent of public instruction or by an appropriate issuing agency of another state or of the federal
17 government;

18 (g) be free of any mental condition that might adversely affect performance of the duties of a
19 peace officer, as determined after:

20 (i) a mental health evaluation performed by a licensed physician or a mental health professional
21 who is licensed by the state under Title 37, who is acting within the scope of the person's licensure when
22 performing a mental health evaluation, who is not the applicant's personal physician or licensed mental health
23 professional, and who is selected by the employing authority; or

24 (ii) satisfactory completion of a standardized mental health evaluation instrument determined by
25 the employing authority to be sufficient to examine for any mental conditions within the meaning of this
26 subsection (2)(g), if the instrument is scored by a licensed (2)(g) physician or a mental health professional acting
27 within the scope of the person's licensure by a state;

28 (h) be free of any physical condition that might adversely affect performance of the duties of a

1 peace officer, as determined after satisfactory completion of a physical examination performed by a health care
2 provider who is licensed by the state under Title 37 and acting within the scope of the person's licensure when
3 performing the physical examination, who is not the applicant's personal health care provider, and who is
4 selected by the employing authority;

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

8 (j) possess or be eligible for a valid Montana driver's license; and

9 (k) be certified or be eligible for certification as a peace officer by the council or become eligible for
10 certification upon completion of the requirements contained in subsections (6) through (10).

11 (3) At the time of appointment, a peace officer shall take the formal oath of office prescribed in
12 Article III, section 3, of the Montana constitution. No other oath may be required.

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

16 (5) It is the duty of an appointing authority in Montana to ensure that each peace officer appointed
17 under its authority has the basic training, including any training required in subsections (6) through (8), in
18 addition to meeting all other requirements of peace officer certification promulgated by the Montana public
19 safety officer standards and training council. Any peace officer appointed after September 30, 1983, who fails to
20 meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic training
21 required by subsections (6) through (8) forfeits the position, authority, and arrest powers accorded a peace
22 officer in this state.

23 (6) Except as provided in subsections (7) and (8), a peace officer shall successfully complete the
24 peace officer basic course at the Montana law enforcement academy, as approved by the council, within 1 year
25 of:

26 (a) the peace officer's initial appointment as a peace officer; or

27 (b) the peace officer's most recent appointment as a peace officer if the peace officer has had a
28 break in service as a peace officer of more than 5 years.

1 (7) (a) If a peace officer previously satisfied the requirement in subsection (6), is certified or is
2 eligible for certification as a peace officer in Montana or may become eligible for certification upon completion of
3 the probationary period in subsection (10), and has had a break in service as a peace officer of less than 3
4 years, the peace officer is not required to satisfy the requirement in subsection (6) or to attend an equivalency
5 course prior to returning to work in Montana as a peace officer.

6 (b) If a peace officer previously satisfied the requirement in subsection (6), is certified or is eligible
7 for certification as a peace officer in Montana or may become eligible for certification upon completion of the
8 probationary period in subsection (10), and has been continuously employed as a peace officer outside of
9 Montana for no more than 3 years, the peace officer is not required to satisfy the requirement in subsection (6)
10 or to attend an equivalency course prior to returning to work in Montana as a peace officer.

11 (c) If a peace officer previously completed the peace officer basic course successfully, is certified
12 or is eligible for certification as a peace officer in Montana or may become eligible for certification upon
13 completion of the probationary period in subsection (10), and has been continuously employed as a peace
14 officer outside of Montana for more than 3 years or who has had a break in service as a peace officer for more
15 than 3 years but less than 5 years, the peace officer shall successfully complete the peace officer basic
16 equivalency course, as approved by the council, within 1 year of the peace officer's most recent appointment as
17 a peace officer in Montana. If the peace officer fails the basic equivalency course, the officer shall satisfy the
18 requirement in subsection (6) at the next available opportunity.

19 (d) If a person satisfied the requirement in subsection (6) prior to the person's appointment or
20 employment and is hired or appointed as a peace officer more than 3 years but less than 5 years after the date
21 that the person satisfied the requirement in subsection (6), the person shall successfully complete the peace
22 officer basic equivalency course, as approved by the council, within 1 year of the person's most recent
23 appointment or employment as a peace officer. If the person is not appointed or employed as a peace officer
24 within 5 years after the date of the person's successful completion of the requirement in subsection (6), the
25 person shall satisfy the requirement in subsection (6) within 1 year of the person's most recent appointment or
26 employment as a peace officer in Montana.

27 (8) (a) Except as provided in subsection (8)(c), if a peace officer has successfully completed a
28 peace officer basic course that is taught or approved by a federal, state, local, or United States military law

1 enforcement agency, that satisfies the peace officer basic training requirement for that agency, and that the
2 council has reviewed and approved as commensurate with the current peace officer basic course offered at the
3 Montana law enforcement academy, the peace officer shall successfully complete the peace officer basic
4 equivalency course, as approved by the council, within 1 year of the officer's initial appointment in Montana. If
5 the officer fails the basic equivalency course, the officer must satisfy the requirement in subsection (6) at the
6 next available opportunity.

7 (b) Except as provided in subsection (8)(c), if a peace officer has successfully completed a peace
8 officer basic course that is taught or approved by a federal, state, local, or United States military law
9 enforcement agency and that satisfies the peace officer basic training requirement for that agency and if that
10 peace officer's combined training and experience have been reviewed and approved by the council as
11 commensurate with the current peace officer basic course offered at the Montana law enforcement academy,
12 the peace officer shall successfully complete the peace officer basic equivalency course, as approved by the
13 council, within 1 year of the officer's initial appointment in Montana. If the officer fails the basic equivalency
14 course, the officer must satisfy the requirement in subsection (6) at the next available opportunity.

15 (c) If the peace officer has had a break in service as a peace officer for more than 5 years, the
16 officer shall complete the requirement of subsection (6) within 1 year of the officer's initial appointment as a
17 peace officer in Montana.

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

25 (10) A peace officer who has successfully met the training, employment, and educational standards
26 of this section, has successfully met the training and employment standards set by the council, and has
27 completed a 1-year probationary term of employment must be issued a peace officer basic certificate by the
28 council certifying that the peace officer has met all of the basic qualifying peace officer standards of this state.

1 (11) It is unlawful for a person whose basic certification as a peace officer has been revoked or
2 denied by the Montana public safety officer standards and training council for misconduct to act as a peace
3 officer. It is unlawful for a person whose peace officer basic certification has been suspended by the council to
4 act or be appointed or employed as a peace officer in Montana during the period in which the certification is
5 suspended. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of
6 imprisonment not to exceed 6 months in the county jail or by a fine not to exceed \$500, or both."

7
8 NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an
9 integral part of Title 53, chapter 1, part 2, and the provisions of Title 53, chapter 1, part 2, apply to [section 1].

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

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