

SENATE BILL NO. 299

INTRODUCED BY F. THOMAS

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MANDATORY SERVICE OF PROCESS LAWS FOR SHERIFFS; PROVIDING AN EXEMPTION FROM THE OFFENSE OF CRIMINAL TRESPASS TO PROPERTY FOR SHERIFFS OR SHERIFF'S DEPUTIES WHILE SERVING LEGAL PROCESS OR NOTICE; AMENDING SECTIONS 3-10-702, 7-32-234, 7-32-2121, AND 45-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the State of Montana has a system of district, justice, and municipal courts that are integral to all citizens' enjoyment of the benefits of an orderly society based on constitutional protections and laws; and

WHEREAS, the proper operation and function of our civil and criminal state courts gives Montana the boundaries of law and order within which to exercise our freedoms and individual rights and is important to every law-abiding citizen and governmental body; and

WHEREAS, Montana law currently requires the sheriffs and their deputies to serve all legal process and notices, and the ability of all sheriffs and their deputies to serve legal process and notices is essential to the necessary operation of Montana's civil and criminal judicial systems; and

WHEREAS, the 64th Legislature finds that a sheriff and the sheriff's deputies acting in the course and scope of their mandated duties to serve legal process and notices must be reasonably able to approach the front doors of private residences to accomplish this task and further finds that the impact of this approach is minimal when balanced against the interest of all individuals in the orderly conduct of the civil and criminal justice systems.

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

**Section 1.** Section 3-10-702, MCA, is amended to read:

**"3-10-702. Governed by law prescribing sheriffs' duties.** (1) All the provisions of 3-5-407, 7-32-2101, 7-32-2102, 7-32-2121~~(1) through (3) and (7) through (12)~~(1)(a) through (1)(c) and (1)(g) through (1)(l), 7-32-2122, 7-32-2124, 7-32-2127, 7-32-2129 through 7-32-2131, 7-32-2250, 25-3-101, 25-3-202, 25-3-204 through 25-3-206, 25-3-301, 25-3-302, 25-13-403, 27-18-305, and 27-18-1505 apply to constables and govern their powers, duties, and liabilities.



1 (2) The provisions of 7-32-2141(1) apply to constables. Fees collected by a constable for services, as  
 2 provided in 7-32-2141(1), must be paid to the county treasurer, as provided in 7-4-2511(2), and credited to the  
 3 budget of the justice's court."

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5 **Section 2.** Section 7-32-234, MCA, is amended to read:

6 **"7-32-234. Exceptions.** Provisions of 7-32-211, 7-32-213, and 7-32-214 do not apply to auxiliary  
 7 officers, to special services officers, to sworn volunteer peace officers who are not assigned to general law  
 8 enforcement duties, or to members of a posse organized to quell public disturbance or domestic violence in  
 9 accordance with 7-32-2121~~(6)~~(1)(f)."

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11 **Section 3.** Section 7-32-2121, MCA, is amended to read:

12 **"7-32-2121. Duties of sheriff. (1)** The sheriff shall:

13 ~~(1)~~(a) preserve the peace;

14 ~~(2)~~(b) arrest and take before the nearest magistrate for examination all persons who attempt to commit  
 15 or have committed a public offense;

16 ~~(3)~~(c) prevent and suppress all affrays, breaches of the peace, riots, and insurrections that may come  
 17 to the sheriff's knowledge;

18 ~~(4)~~(d) perform the duties of a humane officer within the county with reference to the protection of animals;

19 ~~(5)~~(e) attend all courts, except municipal, justices', and city courts, at their respective terms or sessions  
 20 held within the county and obey their lawful orders and directions;

21 ~~(6)~~(f) command the aid of as many inhabitants of the county as are necessary in the execution of the  
 22 sheriff's duties;

23 ~~(7)~~(g) take charge of and keep the detention center and the inmates in the detention center, unless the  
 24 detention center is operated by a private party under an agreement entered into under 7-32-2201 or by a  
 25 detention center administrator or by another local government;

26 ~~(8)~~(h) endorse upon all notices and process the year, month, day, hour, and minute of receipt and issue  
 27 to the person delivering them, on payment of fees, a certificate showing the names of the parties, the title of the  
 28 paper, and the time of receipt;

29 ~~(9)~~(i) serve all process or notices in the manner prescribed by law;

30 ~~(10)~~(j) certify in writing upon the process or notices the manner and time of service or, if the sheriff fails

1 to make service, the reasons for this failure, and return the papers without delay;  
 2 ~~(11)(k)~~ take charge of and supervise search and rescue units and their officers whenever search and  
 3 rescue units are called into service; and  
 4 ~~(12)(l)~~ perform other duties that are required by law.  
 5 (2) The provisions of 45-6-203(1)(b) do not apply to a sheriff or a deputy sheriff acting within the course  
 6 and scope of the duties required by subsection (1)(i)."

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 8 **Section 4.** Section 45-6-203, MCA, is amended to read:

9 **"45-6-203. Criminal trespass to property.** (1) Except as provided in 7-32-2121, 15-7-139, 70-16-111,  
 10 and 76-13-116, a person commits the offense of criminal trespass to property if the person knowingly:

- 11 (a) enters or remains unlawfully in an occupied structure; or
- 12 (b) enters or remains unlawfully in or upon the premises of another.

13 (2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed \$500  
 14 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

15 (3) A person convicted of or who forfeits bond or bail for committing an act of criminal trespass involving  
 16 property owned or administered by the department of fish, wildlife, and parks or while hunting, fishing, or trapping  
 17 may be subject to revocation of the person's privilege to hunt, fish, or trap in this state for up to 24 months from  
 18 the date of conviction or forfeiture."

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 20 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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