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Report on Implementation of  
the Missoula Marijuana Initiative  
(Initiative 2)

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Report #3

Covering July 1<sup>st</sup> through December 31st, 2008

*Released August 2009*

Available at [www.co.missoula.mt.us/initiative2](http://www.co.missoula.mt.us/initiative2)

## Executive Summary:

In November 2006, Missoula County voters passed Initiative 2 by a vote of 55%. The initiative recommended that government officials treat adult marijuana offenses as the lowest priority, and established a Community Oversight Committee charged with publishing a semi-annual report evaluating the initiative's implementation.

In March 2007, commissioners adopted an amendment proposed by the county attorney, making the initiative's lowest priority recommendation applicable only to misdemeanor offenses, which the county attorney pledged to stop prosecuting.

In this, our third report, we reviewed government data on marijuana incidents in Missoula County that occurred from July 1<sup>st</sup>, 2008 through December 31<sup>st</sup>, 2008. Law enforcement officials reported, on average, encountering an adult with marijuana every single day in this time period.

Law enforcement reports of incidents involving marijuana have *increased* in frequency since the initiative's passage. While there has been a modest decrease in marijuana incidents reported by the Missoula County Sheriff's Department and the University of Montana, frequency of marijuana incidents reported by the Missoula Police Department appears to have increased by 50% since 2007.

In short, the lowest priority recommendation issued to public officials by voters in 2006 continues to be mostly disregarded.

The exception to this trend is reflected in the current policy of the Missoula County Attorney's office, which has not prosecuted adults whose *only* charge was misdemeanor possession of marijuana. However, the county attorney has stated that he reserves the option to reverse that policy and prosecute those individuals at any time.

Initiative 2 has been in effect now for close to three years. Approximately 700 people in Missoula County were involved in a law enforcement incident involving marijuana from the of date initiative's passage through the end of 2008. That number has likely exceeded 1,000 people now.

Voters may have reasonably anticipated that a decline in marijuana arrests would have resulted, not an increase. We believe that Missoula County voters have a right to know why their recommendation is not being heeded, and public officials have a duty to respond. With this in mind, the Committee has several recommendations:

- 1. Law enforcement professionals already have the discretion to make or not make an arrest in varying circumstances, and should utilize that discretion with Initiative 2 in mind.**
- 2. The Board of County Commissioners, Missoula County Sheriff's Department, and the office of the Missoula County Attorney should each issue updated public statements presenting their current respective positions**

**on Initiative 2's implementation.** If the Initiative has in fact produced an effect opposite to that which the voters intended, the voters deserve an official explanation.

- 3. With the goal of establishing a consistent policy throughout the geographic borders of Missoula County, the Missoula County Attorney's office should send a copy of their non-prosecution policy to the Missoula City Attorney, and explicitly encourage adoption of a similar policy at the city level.**
- 4. City officials, including the Mayor, Chief of Police, City Attorney, and City Council, while not specifically addressed by the initiative, should adopt policies regarding misdemeanor marijuana charges that are compatible with Initiative 2, as soon as possible.** City voters in particular requested a reduction in adult marijuana arrests, and appear to have been given the opposite.
- 5. Government officials should provide information to the committee concerning any multi-agency task force activities with regards to marijuana in Missoula County.** One of the stated concerns about the initiative was that it would result in the county becoming a regional hub for big-time dealers, and task force information will help us assess whether that's come to pass.
- 6. Government officials should provide information to the committee concerning how law enforcement professionals encounter marijuana.** This information was present in the data we received from the Sheriff's Department for our first report, but has been omitted since the adoption of a semi-automated spreadsheet methodology. It's important because it provides a context that could illuminate the extent to which law enforcement professionals in the field are following the voters' "lowest priority" recommendation. This information is presumably present in incident and arrest reports, which (according to MCA 44-5-103) are public information.

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## **Introduction:**

In November 2006, Missoula County voters voted on Initiative MCSO2006-02, commonly referred to as Initiative 2 or simply “the marijuana initiative”. The stated purpose of the initiative is to “alter law enforcement priorities and make adult marijuana offenses the lowest law enforcement priority in Missoula County”. Similar initiatives have passed in Seattle, WA, Fayetteville, AR, and Hawaii County, Hawaii. In March 2007, commissioners adopted an amendment proposed by the county attorney, making the initiative's lowest priority recommendation applicable only to misdemeanor offenses, which the county attorney pledged to stop prosecuting.

Almost 55% of county voters supported the initiative, with support strongest within the city of Missoula, where several precincts reported over 80% voter support.

The initiative creates a 9-member volunteer citizen board, in whose hands lies the responsibility of reporting back to the County Commissioners on implementation of the initiative. Specifically, the Committee is required to submit semi-annual reports to the Board of County Commissioners on implementation of the initiative, with these reports to include information on:

- the numbers of arrests and prosecutions,
- estimated time and money spent on said government actions,
- information on local cooperation with state and federal authorities involved with marijuana enforcement, and
- any instances of marijuana enforcement the Committee believes violated the spirit of the initiative.

Our first report established a historical, national, statewide, and local context on the topic of marijuana policy, and was delivered to the County Commissioners in November 2007. It is available online at: <http://www.co.missoula.mt.us/initiative2/reports/2007/>

This is the Committee's third report, covering the period July 1<sup>st</sup>, 2008 through December 31<sup>st</sup>, 2008, but also reflecting on broader trends.

## **Information Sources:**

To report on the initiative's implementation, the committee must collect data from various government bodies. While Montana's Constitution and laws require public access to certain criminal justice data, our experience is that it's not always readily available or in a format conducive to analysis.

In preparing the committee's third report, we have gathered data from various public agencies, which constitute a partial list of government entities that participate in the direct execution and ancillary effects of marijuana prohibition in Missoula County:

- Missoula County Sheriff's Department
- Missoula Police Department
- Missoula Municipal Court
- Missoula County Attorney's Office
- University of Montana Public Safety

The Sheriff's Department and the Missoula Police Department share a records management system, which was used to produce spreadsheets of requested data. Other information was received via email from officials within the respective agencies.

Where feasible, all public data has been published to the website: <http://i2files.montanadrugpolicy.org/>

We thank the public servants who cooperated with our data collection efforts for their time and assistance.

## Findings:

*Spreadsheets used in this report are available at:*

*<http://i2files.montanadrugpolicy.org/2008data/>*

### ***Law Enforcement Incident Reports:***

The Missoula Police Department (MPD) and Missoula County Sheriff's Office (MCS) provided data in the form of spreadsheets containing one row per object of evidence seized in the second half of 2008, with a total of 148 unique incident numbers, compared to 179 in the first half of the year. Both agencies' incident rates declined slightly in the second half of the year.

The spreadsheets did not provide a count of individuals involved. A single incident may involve multiple individuals and multiple items of evidence. For example, a single incident number might represent two individuals and three items of evidence, such as a bag of marijuana, a pipe, and rolling papers.

We estimate that 181 individuals crossed paths with city or county law enforcement officials in the second half of 2008, compared to 205 individuals in the first half. These estimates are based on an analysis of unique combinations of age, gender, and race recorded for each incident. In other words, if two thirty-year-old white males were involved in an incident, we could only record it as a single individual rather than two separate people. The actual number of individuals may therefore be higher than 181.

The MCS data provided do not include any multi-jurisdictional drug task force actions in which deputy sheriffs were involved, except in cases involving deputy sheriffs only. In other words, deputies may have participated in other drug task force cases involving marijuana, and we have no information on these actions.

A summary of these incidents is provided in the following table:

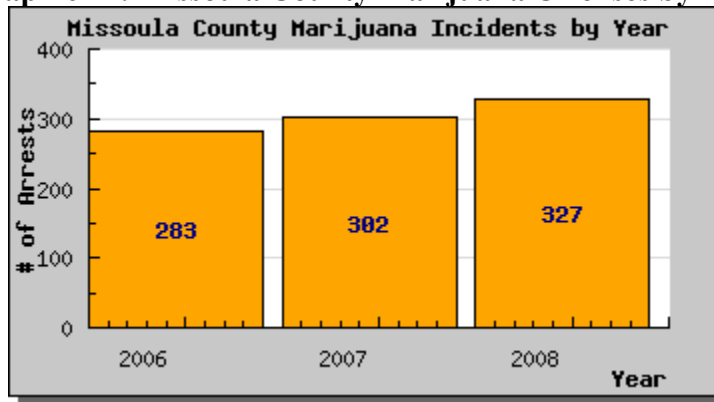
**Table #1: Marijuana Incidents Reported by Law Enforcement**

<b>Entity/Dept</b>	<b>2007 est.*</b>	<b>Jan-Jun 2008</b>	<b>Jul-Dec 2008</b>	<b>2008 Total</b>	<b>Annual % change</b>
University	52	18	15	33	<b>-37%</b>
City Police (MPD)	174	143	118	261	<b>+50%</b>
County Sheriff (MCS)	82	36	30	66	<b>-20%</b>
<b>Totals:</b>	<b>308</b>	<b>197</b>	<b>163</b>	<b>360</b>	<b>+17%</b>

\* 2007 estimates are the annualized estimates provided in our 2007 report.

Missoula County reports crime statistics to the Montana Board of Crime Control (MBCC). MBCC data for Missoula do not include University data, and report 302 misdemeanor marijuana offenses in Missoula County in 2007, and 283 for 2006, the year the initiative passed. If we exclude our University data and project our 2008 MCS and MPD totals for the full year, a trend appears evident:

**Graphic #1: Missoula County Marijuana Offenses by Year**



Source: MBCC, MCS, MPD

While campus and MCS marijuana incidents declined, the overall increased marijuana incident rate is accounted due to the Missoula Police Department. In our last report, we projected a 62% increase in Missoula Police Department marijuana incident reports; the actual amount was somewhat lower than projected, but still a 50% increase over 2007, based on the data provided to us by the department.

### ***Municipal Court Cases:***

This is the city court that handles the bulk of misdemeanor marijuana charges. In fact, all drug possession and paraphernalia charges handled in this court are for marijuana.

Pat Morgan of the Municipal Court reported to us that 222 drug (marijuana) offenses were handled by that court in the second half of 2008, an average of nearly 2 every day in court.

Prosecution for misdemeanor marijuana possession or marijuana paraphernalia in Municipal Court generally results in a criminal conviction and a fine of several hundred dollars.

### ***County Attorney Prosecutions:***

The policy of the Missoula County Attorney's office is to prosecute only those misdemeanor adult marijuana crimes that are incidental to a more serious crime such as robbery or assault. For cases in which adult misdemeanor marijuana was the *only* offense, criminal prosecution is not pursued. While we are informed that this policy could be rescinded at any time, unprosecuted cases that languish for more than one year are no longer prosecutable.

During the second half of 2008, the county attorney's office received 15 referrals of cases of adults

charged with misdemeanor marijuana crimes only. None was prosecuted.

## **Limitations and Caveats:**

### ***Incomplete Data Collection:***

A careful read of the Initiative reveals several areas of data collection that have not been fulfilled. This has occurred for various reasons:

- *The data don't exist:* For example, there is no formal time tracking of government employee time on a single incident, and so we must rely on informal estimates of “average” time required provided by department heads. Some cases take days or weeks of staff time to resolve. We have no way of knowing if the informal estimates are accurate.
- *The data are in a format difficult to retrieve.* In the event that data exists only in handwritten or free-text database fields, it can be difficult to extract and analyze in aggregate. For example, our initial information request from the Missoula Police Department resulted in clerical staff printing a stack of pages that they then 'coded' with highlighting pens to generate answers to our questions.
- *Government officials have not provided the requested data.* For example, we have requested information on probation and parole costs associated with marijuana convictions, and our requests have gone unanswered. Also, as noted below, incident data from the Missoula County Sheriff's Department is incomplete; deputy participation in multi-agency task forces is not included in the information provided to the committee.
- *The committee has not requested the data.* The committee's own compliance with the initiative's reporting requirements has been incomplete. For example, we have no data so far on property seizures related to marijuana enforcement, multi-agency contracts related to marijuana enforcement, or local assistance in state and federal marijuana enforcement activities. Data collected for our first report included some information about how deputies came to encounter marijuana and whether the incident occurred on public or private property, but since the law enforcement data collection efforts have been semi-automated (at our request), we no longer have ready access to that additional important information.

### ***Not all marijuana incidents reported:***

Data received from MPD and MCS include all marijuana offenses in which staff from those two agencies constituted the entirety of law enforcement involvement. If other government agencies (such as DEA or Montana Highway Patrol) or multi-jurisdictional entities (such as regional task forces) were involved in the incident, we have no information about it.

Therefore, this report underestimates the number of marijuana incidents in Missoula County.

### ***Comparisons to previous data:***

Ideally, data from public officials would be received by the committee in a standardized format. While this has improved, our 2007 data was imperfect, and so drawing comparative conclusions may not be sound.

In order to provide a more accurate comparison between 2007 numbers and 2008, we requested incident data updates from MCS and MPD for calendar year 2007, but both agencies declined to provide them. It is therefore possible that differences in 2007 data collection, or irregular incident occurrence rates, could make our estimates of marijuana incident trends flawed.

We requested and received crime data from the Montana Board of Crime Control for 2007, and used this for some comparisons.

### ***Taxpayer cost centers not reported:***

The purpose of these reports is to assess the extent to which public officials are complying with the voters' recommendation that adult marijuana offenses be their lowest possible priority, and to answer the question: **“How much taxpayer money is spent prohibiting marijuana?”**

We assume that marijuana enforcement expenditures in Missoula County span across a wide range of government functions and agencies. In this report, we have some data from some of them:

- Missoula City Police Department
- Missoula County Sheriff's Department
- University of Montana Public Safety Department
- Missoula City Municipal Court

However, we have not collected information from a longer list of local and state government bodies spending taxpayer money on marijuana prohibition:

- State Highway Patrol
- Missoula Airport Police
- Multi-jurisdictional drug task forces
- Court-ordered drug education/treatment/counseling
- Court-ordered chemical dependency testing
- Court-ordered body fluid testing
- County Detention Center
- City jail, evidence locker costs
- Public Defenders
- Probation & Parole

There are also potential indirect costs such as:

- Defendants taking time off work to attend court and compulsory drug education
- College students losing financial aid, ending their education
- Drug convictions can trigger a loss of government housing
- Denial of employment, economic productivity loss
- Increased use of public assistance
- Separation of children from their parents

In this report, we've barely scratched the surface of the costs borne by Missoula taxpayers to continue marijuana prohibition.

Because of the array of agencies and data collection, collation, and analysis tasks required, we are moved to conclude that to provide a truly comprehensive accounting of these costs may be beyond the current capabilities of this volunteer committee.

If the public (or public officials) want such an accounting, funding for professional policy analysts will be required.

## Discussion:

### *How much are we spending on marijuana enforcement?*

Using the time estimates and wage data collected for our 2007 report, and acknowledging that we are analyzing only a portion of the resources expended on adult marijuana misdemeanors, we can summarize the basic law enforcement costs as follows:

**Table #2: Estimated Direct Marijuana Law Enforcement Costs, 2008**

Entity/Dept	# Cases	Hours/case	Avg. Wage	Taxpayer cost
University	33	0.43	\$18.50	\$143.19
City Police	261	2	\$22.50	\$6,390.00
County Sheriff	66	2	\$21.21	\$1,527.12

**It should be noted that these cost estimates are nowhere near comprehensive.** Besides the fact that the estimates of time required per case were informal guesses by department heads, costs not reflected at all include:

- administrative,
- judicial,
- training,
- detention/incarceration,
- evidence storage,
- evidence testing,
- public defenders,
- records storage,
- probation and supervision,
- compulsory treatment

It is easy to estimate that each of these categories of expense could add thousands of dollars a year to the overall cost of marijuana prohibition in Missoula County.

A 2005 report by Harvard economist Dr. Jeffrey Miron estimated that the state of Montana spends around \$9 million annually on marijuana prohibition. The figure was arrived at by analyzing state police, judiciary, and correctional budgets, and the fraction of marijuana arrests compared to all arrests

in each state.

If these costs are roughly distributed by population density, then Missoula County total expenditures on marijuana prohibition are probably closer to **one million dollars annually**. (Source: <http://www.prohibitioncosts.org/>)

For the hundreds of Missoulians convicted of misdemeanor marijuana crimes in 2008, secondary costs can be severe: loss of student aid, housing assistance, employment, etc.. These incidental costs can create tertiary costs borne by our local community in the form of unemployment, less educated populace, increased demands on public assistance programs, public defenders, and so on.

### ***How much marijuana is being seized?***

In an informal review of the marijuana incident reports provided by MCS and MPD, we again calculated the median quantity of marijuana seized to be approximately 2 grams for both agencies.

For perspective, the ten-cent Eisenhower Dime, our smallest coin, weighs 2.2 grams. A small kitchen spice jar of dried basil contains 10 grams of the herb.



**Median weight of marijuana seizures in Missoula County: 2 grams, slightly less than the weight of a Dime.**

We examined 325 MPD and 61 MCS property seizure line items, which include items such as rolling papers, jerky chew cans, beer cans, scales, and pill bottles, searching for seizures that documented the weight of marijuana seized. We calculated the median quantity seized by reviewing those 54 incidents in which the weight of seized marijuana was specifically noted, excluding those which listed only the weight of marijuana plus the container in which it was found.

For example, if a line item only mentioned “2.3 GRAMS OF MARIJUANA INCLUDING PACKAGING”, we excluded it, since the weight of the packaging is irrelevant to the amount of marijuana seized. That packaging might have been a wooden or metal box, for example.

Additionally, we ignored the phrase “less than”, so that “less than one gram” was treated as exactly one gram. This means the actual median weight may be even lower than our estimate.

**In summary, the vast majority of marijuana seizures in Missoula County are of small personal amounts.**

### ***Who is being affected by marijuana enforcement?***

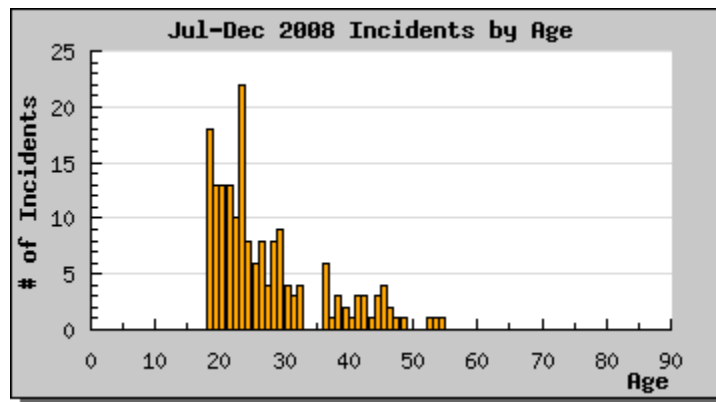
Mirroring trends nationwide, marijuana enforcement affects mainly the young and people of color.

#### *Age:*

Like the first half of the year, the majority (73%) of individuals involved in marijuana incidents in the second half of 2008 were under age 30. Forty percent were age 18-22. Because the language and intent of the initiative specifically excludes children, no data were requested or received concerning people under the age of 18.

Besides being the most common targets of marijuana prohibition enforcement, young people may suffer more severe consequences of arrest (criminal record, fines, compulsory treatment and urine testing, loss of financial aid) due to the likelihood that they will not have the financial resources to employ a vigorous defense.

**Graphic #2: Marijuana Incidents by Age, Jul 1 – Dec 31, 2008:**



Source: MCS, MPD

#### *Race:*

The data provided by MCS and MPD indicate that non-white people are more likely be involved in marijuana law enforcement incidents than their population would suggest. Comparing incident data to recent US Census data (<http://quickfacts.census.gov/qfd/states/30/30063.html>), non-whites are over-represented in marijuana incidents, as can be seen in the following table:

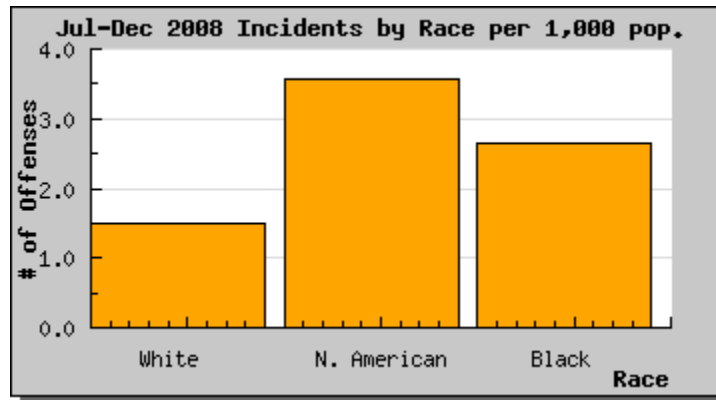
**Table #3 Marijuana Incidents by Race, Jul 1 – Dec 31, 2008**

<b>Race</b>	<b># of Incidents</b>	<b>Percentage of Incidents</b>	<b>Percentage of County Population (2006)</b>
White	160	88.40%	93.70%
Native American/Indian	10	5.50%	2.60%
Black	2	1.10%	0.70%

**Source: MCS, MPD. Incident numbers ignore individuals whose race was not recorded.**

When depicted as ratios of incidents per population, it appears that non-whites are more likely to be involved in a adult misdemeanor marijuana incident.

**Graphic #3: Marijuana Incidents by Race per 1,000 population, Jul 1 – Dec 31, 2008:**



Source: US Census, MCS, MPD

According to the federal government, in small metropolitan counties, Native Americans age 12 and over are only slightly more likely (11.6%) to have used marijuana in the last month than black (6.7%) and white (6.4%) people. (Source: <http://www.drugabusestatistics.samhsa.gov/2k7/popDensity/popDensity.htm>)

## Conclusions:

The Community Oversight Committee's primary role in implementation of Initiative 2 is to assess compliance with the lowest priority policy recommended by voters. The Committee has earnestly striven to do so. From the information we have gathered, we can say this:

**The voters' recommendation continues to be ignored by most of the officials in a position to heed it.**

The only evident exception is the county attorney's current policy of non-prosecution of cases involving an adult charged with misdemeanor marijuana possession only. However, we have been advised that this policy could be rescinded at any time.

On average, an adult with marijuana had an encounter with law enforcement officials in Missoula County every single day from July 1st through December 31<sup>st</sup> 2008. The vast majority of these incidents involved young adults possessing small quantities of marijuana. While law enforcement officials may not, as a general rule, specifically seek to make arrests or issue citations for personal marijuana use, they are nevertheless doing so every day.

Since the amended initiative asks government officials to make adult misdemeanor marijuana law enforcement their lowest possible priority, one might conclude that *any* citations of adults for such small quantities of marijuana would constitute a violation of the spirit of the initiative.

Marijuana incidents involving the Missoula Police Department appear to have risen by 50% in 2008 compared to 2007, which may be disappointing particularly to city residents, where the initiative passed overwhelmingly in most precincts.

Aside from the adoption of a policy of non-prosecution by the County Attorney, and the formation of the Oversight Committee, government officials have generally failed to implement the recommendation of voters as expressed in the initiative.

As we approach the third anniversary of the Initiative's passage, we present the following recommendations:

- 1. Law enforcement professionals already have the discretion to make or not make an arrest in varying circumstances, and should utilize that discretion with Initiative 2 in mind.**
- 2. The Board of County Commissioners, Missoula County Sheriff's Department, and the office of the Missoula County Attorney should each issue updated public statements presenting their current respective positions on Initiative 2's implementation.** If the Initiative has in fact produced an effect opposite to that which the voters intended, the voters deserve an official explanation.
- 3. With the goal of establishing a consistent policy throughout the geographic borders of Missoula County, the Missoula County Attorney's office should send a copy of their non-prosecution policy to the Missoula City Attorney, and explicitly encourage adoption of a similar policy at the city level.**

4. **City officials, including the Mayor, Chief of Police, City Attorney, and City Council, while not specifically addressed by the initiative, should adopt policies regarding misdemeanor marijuana charges that are compatible with Initiative 2, as soon as possible.** City voters in particular requested a reduction in adult marijuana arrests, and appear to have been given the opposite.
5. **Government officials should provide information to the committee concerning any multi-agency task force activities with regards to marijuana in Missoula County.** One of the stated concerns about the initiative was that it would result in the county becoming a regional hub for big-time dealers, and task force information will help us assess whether that's come to pass.
6. **Government officials should provide information to the committee concerning how law enforcement professionals encounter marijuana.** This information was present in the data we received from the Sheriff's Department for our first report, but has been omitted since the adoption of a semi-automated spreadsheet methodology. It's important because it provides a context that could illuminate the extent to which law enforcement professionals in the field are following the voters' "lowest priority" recommendation. This information is presumably present in incident and arrest reports, which (according to MCA 44-5-103) are public information.

**Submitted respectfully this 25<sup>th</sup> day of August, 2009, by the Initiative 2 Community Oversight Committee:**

**John Masterson, Chair**

**Michael Bailey, Vice-Chair**

**Angela Goodhope, Secretary**

**Sam Barer**

**Donna Hamilton**

**Kelly Larsen**

**Steve Lohning**

**Craig Shannon**

**Charly Tiernan**

