

MINUTES OF THE JUDICIARY COMMITTEE
January 26, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown in Room 224A of the Capitol at 8:00 a.m. All members were present except REP. SEIFERT, who was excused. Brenda Desmond, Legislative Council was present.

HOUSE BILL 234

REP. YARDLEY, sponsor, stated this bill provides that trustees of school districts are individually immune from liability for exemplary and punitive damages when acting in their official capacity.

REP. YARDLEY stated that exemplary and punitive damages included damages for fraud and malicious acts while within the scope of their employment.

CHIP ERDMANN, Montana School Board Association, was in favor of the bill. A similar bill last session was defeated in the Senate although it passed the House. EXHIBIT A is a witness statement submitted by ERDMANN outlining his comments.

TAMMY HALL, School District 7, was in favor of the bill. EXHIBIT B. HALL stated as a parent, business person and school board member she is interested in the education of the school children. As a school board member, she must make many controversial decisions. It is not fair that school board members who put in thousands of hours without being compensated for their time are subject to lawsuits. When the legislature exempted school boards from damages they never intended to place the burden on the school board members. Solving this problem is crucial for local control over schools. If the bill does not pass some people will not run for school board. The only people who will run will be people who do not have any property or assets that can be taken away.

RONALD MATTSON, School District 1, was in favor of the bill as a school trustee. EXHIBIT C.

STERLIN NIELSEN, School District 74, was in agreement with the previous remarks. He stated his area is a small community with people moving in and out frequently. A number of trustees have moved; a new member must be appointed to the board. It is hard to find someone willing to be appointed to the board because they know they can be sued.

ALICE TULLY, Montana School Board Association, was in favor of the bill.

JAN PHILLIPS, Hellgate Elementary, was in favor of the bill as it is important to education.

RICK BARTOS, Office of Public Instruction, was in support of the bill. He concurred with previous observations. EXHIBIT D.

DARLENE MEDDOCK, School Trustee, stated people who file for school board trustee appointments care about kids. It is a large task to ask a person. Because of the liability they may incur, some people do not want to run for fear of losing property.

CLAUDIA STEEN, Trustee, was in favor of the bill.

There were no further proponents.

There were no opponents.

In closing, REP. YARDLEY stated liability insurance covering punitive damages is extremely high.

REP. J. BROWN asked if there have been cases brought against school board members. It was replied not as of yet. This bill would prevent that although there is a possibility one could be brought now.

REP. SPAETH stated he thought whenever a trustee was acting in his official capacity he could not be sued for malice or fraud. REP. YARDLEY stated the statutes gives immunity to the school board itself. As a board they are exempt but as individuals they are not.

REP. SPAETH felt the bill would not give much more protection. A witness replied it could possibly discourage lawsuits.

REP. YARDLEY stated school boards in general have liability insurance. School board members, however, are not considered employees.

HOUSE BILL 376

REP. MCBRIDE, sponsor, stated House Bill 376 would generally revise the law on grandparent visitation rights. The current statute was passed in 1979. The current statute provides that a petition for visitation rights may be filed by grandparents only upon changes in the family. The statute further provides that grandparents rights to petition for visitation terminate if the child is placed for adoption. The statute recognizes the rights of the parents of a noncustodial parent

in divorce proceedings and of the rights of a parent of a deceased person as parties who may petition the court to visitation rights. The purpose of this bill is to minimize the intervention. There are many relationships the child might have with other parties but this bill is limited to the grandparents. It is further limited by the amendment as in EXHIBIT E.

Under the proposed amendment the grandparent would still have the right to petition the court for visitation rights. Those rights however, would be terminated if the child was adopted by a person other than a stepparent or a grandparent.

The problem first came to REP. MCBRIDE's attention when several grandparents confronted her with the issue. She felt that the determination of whether grandparents should be allowed to visit a child was based on the best interests of the child. The highest criteria, therefore that the courts would decide, is whether the visitation is within the best interests of the child. Other competing factors would include parental authority and privacy in the home.

JUDITH H. CARLSON, Social Rehabilitation Services, was in favor of the bill as amended.

BETTY BAY, Adoption Specialist of the Department of Social Rehabilitation Services, was also in favor of the bill as amended.

There were no further proponents.

There were no opponents.

In closing, REP. MCBRIDE stated there are only nine states that do not provide for some type grandparent visitation rights. It is important to realize that since the courts have first looked at this issue there have been many changes in our society. Previously we as a society have just looked at what the parents want and have not considered the child's needs and views.

REP. MCBRIDE stated there are many out-of-wedlock births which also create a problem as far as visitation rights are concerned. The unwed mother might raise her child in the grandparents home. A grandparent-grandchild relationship has then been established. If the unwed mother decides to leave the home and take the child, the grandparent should be able to petition the court for visitation rights.

REP. KEYSER asked about page 2, line 24 of the bill in which the court may appoint an attorney to represent the child's interest. REP. MCBRIDE stated that the court would appoint an attorney for the child if the grandparents and parent and their attorneys could not adequately represent the child. The court would award the cost to the prevailing party. The cost of the child's attorney would be included as part of this cost. The child is never the prevailing party.

REP. EUDAILY asked if the amendment should be left as subsection 3 since both dealt with visitation rights. REP. MCBRIDE that would be appropriate. If the amendment were placed at the end of the bill, the subsection should be changed from 6 to 7.

REP. BERGENE asked why the visitation rights would be terminated upon the child's adoption. REP. MCBRIDE responded in many cases allowing the grandparents to visit would undermine the relationship between the child and the parents who adopted him. It may cause problems and not be in the child's best interests.

BAY stated when the parent-child relationship is terminated by the court and the child is adopted, the parental rights are legally with the new set of parents. Sometimes the relationship of the grandparent and the child continues, but it can be confusing in the child's mind.

REP. BERGENE asked if this was being too strict to actually terminate the relationship. BAY replied the grandparents do not have any rights in the first place.

The hearing on the bill closed.

HOUSE BILL 265

REP. MCBRIDE, sponsor, stated House Bill 265 would eliminate certain qualifications for condemnation commissioners in eminent domain proceedings and provide for compensation. REP. MCBRIDE read testimony from EXHIBIT F.

JIM BECK, Department of Highways, was in support of the bill. Under current statute it is not clear who pays the amounts that the commissioners receive. They currently receive \$25 a day for each day they serve. This process could take up to ten days before they make a decision. He stated he recently was at a meeting in which each member was paid \$1,000 for total service of a 10:00 a.m. to 3:00 p.m. meeting. The Department complained but the judge stated that union wages would be paid.

There were no further proponents.

There were no opponents.

REP. KEYSER stated the material one page 3, lines 1-5 are eliminated from present law. He was concerned with taking out the material that the person was not related or a creditor-type relationship. BECK stated he had no problem leaving that material in the bill. REP. MCBRIDE stated that may have some relation to the person who the commissioners pick. She was willing to follow the committee's recommendation on this.

REP. EUDAILY asked if under present statutes the Highway Department picks up the total cost. BECK replied the party seeking condemnation pays the cost. The Highway Department purchases 94% of the property. The price is determined by the commission. If it is appealed then the trial court awards to the prevailing party. BECK stated there would be no problem with requiring the commissioners be within the same judicial district or county.

HOUSE BILL 250

REP. VINCENT, sponsor, stated this bill will provide a mandatory term of imprisonment in the county jail upon a first conviction for driving under the influence of alcohol or drugs.

REP. VINCENT said in 1981 when he introduced the provision of the DUI statute a number of Representatives would not cosponsor the bill. House Bill 250, however, has 35 sponsors. REP. VINCENT noted how attitudes have changed.

In 1982 there were 84 fewer fatalities on Montana roads compared to 1981. Although it is not fair to claim that all the deaths resulted from DUI, the DUI statute presently on the books has saved some lives.

This bill would require a mandatory one day jail sentence. On the second conviction, the offender would be fined not less than \$300 or more than \$500 and be jailed for a minimum of seven consecutive days and a maximum of 30 days. Three days of the jail sentence may not be suspended unless the judge finds the imposition of the sentence will pose a risk to the offender's physical or mental well-being.

If this bill is strong and enforced properly, it will create an effective deterrent. Knowing you will spend one day in

jail if apprehended and convicted will be a definite deterrent. One day in jail is a sobering experience.

This bill will make the law uniform. REP. VINCENT stated some city judges almost always sentence an offender to one day in jail. Some county Justices of the Peace, however, do not. The lack of uniformity is not fair. The one day jail sentence for first time offenders would be the minimum as well as the maximum sentence. The reckless driving statute does not have a minimum jail sentence. The maximum jail sentence for reckless driving is 90 days. REP. VINCENT asked the committee to find out how often reckless driving jail sentences occur.

REP. VINCENT stated that the provision that allows the judge to suspend the sentence because of a finding that imprisonment may endanger the defendant's physical or mental well-being a provision to which people might object.

DORIS FISHER, Montanans Against Drunk Drivers (MADD) was in favor of the bill. She felt it would be a mandatory sentence so that it would create a deterrence. We are talking about our friends, not criminals, FISHER stated. We all take many gambles with safety. The law, however, must be a "brick wall." The punishment should be the same for everyone. Not everyone need be thrown into jail to realize the state means business. It just takes one person from a group (social club, fellow worker, neighbor, friend, etc.) for the others to realize the law cannot be manipulated. This is a middle class crime so a mandatory sentence that treats all offenders the same will have a deterrent effect. FISHER stated people who attend court school for the first time are often angry because of the various sentences other offenders received.

The law must be tough to protect other people we love. FISHER stated her 17 year old daughter was run down by a drunk driver in their driveway in Great Falls. She was not strong enough to stop a speeding car from harming her.

FISHER submitted EXHIBITS G and H. EXHIBIT I is a copy of a bumper sticker 7th and 8th grade classes designed that states "PUT THE BRAKE ON DRUNK DRIVING".

JOHN THOMPSON was in support of the bill. Only four people out of eleven that were convicted of DUI actually served time in jail according to THOMPSON's findings in the local newspaper. In the September 5, 1982 paper, Colonel Landon of the Montana Highway Patrol was quoted as saying: "That while a 24 hour sentence does not seem like much, it can act as a big deterrent."

THOMPSON noted that when the committee heard the bill changing the drinking age from 19 to 21 David Brewer stated the legislature was wasting its time on a "bandaid" bill and that we need to get to the core the problem. THOMPSON feels the solution is mandatory sentencing for DUIs.

One of the objectives of the military justice system is to make an example of others. When a person knows that another person has not shown up for work because he is spending time in jail under a DUI charge, that will be a deterrent to him and his friends and family.

THOMPSON stated when Johnny Carson was arrested for DUI he stated on nationwide television "please do not adjust your set, it is just me blushing". He admitted he did something that was wrong and embarrassing. He also stated he regrets the incident and it will never happen again. THOMPSON stated he believes Carson will never do it again.

THOMPSON stated that perhaps opponents to the bill will state that the jails are not big enough. That, however, is not our problem as sober citizens. Five years from now it would be nice if Montana was known as one of the toughest states in the union against drunk drivers.

CATHY SALTZ stated her family was a victim of a drunk driver. On January 19th there was an editorial in the Bozeman Daily Chronicle concerning the rights of the drunk drivers. She wrote EXHIBIT J in response to that editorial. SALTZ stated the accident referred to in her letter happened three years ago. Her life and her families' lives have been changed forever. Her family is currently \$200,000 in debt as a result of the accident. The drunk driver pays only \$25 per month per each child involved in the accident. The question of rights should be considered.

BARBARA VANT HULL, MADD, was for the bill. She asked how would you care for a child who was so injured that they could not care for themselves? There is not a rehabilitation center in Montana for this. It is hard to find care. She stated a 22 year old man was paralyzed as a result of drinking and driving. That man is now very aggressive. He has no control over his body. He has been placed in a number of hospitals and nursing homes; yet because of his aggressive behavior the personnel cannot handle him.

Her own daughter was involved in a drunk driving accident that has left her paralyzed and in a wheelchair. She is unable to speak and is blind.

A 44 year old man that was involved in a drunk driving accident has brainstem damage and no control over his bodily functions.

There is a great financial and emotional damage to people who cannot function. EXHIBIT K. More people have been damaged by drunk drivers than in all of the Vietnam war.

MARY DOUBEK, MADD, also spoke in favor of the bill. DOUBEK felt the majority of people would obey this proposed law. Instead of considering how harsh the bill is the committee should consider the victims of drunk drivers. The bill could also save the drunk driver from himself. The penalty should fit the crime. DOUBEK wondered why people would not want such a law. EXHIBIT L.

STEVE KING, representing Shodair Chemical Treatment Center, spoke in favor of the bill. KING felt that a formal evaluation should be part of the alcohol information course. In Minnesota an offender is formally evaluated and a recommendation is sent back to the court.

BILL WARE, Montana Chief of Police Association supports the bill. The Association does not feel that one day in jail is an extensive punishment for this crime.

BETTY WING, Deputy County Attorney in Missoula, represented Missoula County Task Force for the Prevention of Drunk Driving. She supported the bill for reasons previously mentioned. WING suggested the bill be amended to require a written statement from a licensed physician or psychologist for the dismissal of a jail sentence under the medical escape clause. She stated that it is overused and a written statement should be mandatory. There are some cases where it is a serious problem to place an offender in jail. For the jail to assume the liability is often far too wide. Therefore, the medical escape clause is good if it is not overused.

People are often annoyed at having to pay the fine for drunk driving or having their insurance rates go up. It would be a real deterrent for the offender to go to jail and wear the blue outfits. That would definitely be a deterrent.

WING noted other traffic offenses have penalties of from 10 days to up to 90 days in jail. The 24 hour imprisonment is not that much time. WING felt a maximum jail sentence of 90 days for the first offense should be amended into the bill. The time could be suspended if the offender obtains help towards his problem or if he pays the victim restitution.

WING noted the following statistics other states have towards DUI offenders:

North Dakota	3 days
South Dakota	30 days
California	4 days - 6 months
Wyoming	30 days
Washington	1 day - 1 year
New Mexico	30 - 90 days
Idaho	up to 6 months
Texas	3 days - 2 years

Montana is at the bottom of the list. EXHIBIT M.

Justice of the Peace in Cascade County, GLADYS VANCE, was in favor of the bill. VANCE read testimony from EXHIBIT N. Her suggested amendment is listed on page 5 of her testimony.

There were no further proponents.

MYRON PITCH, a city judge, was opposed to the bill as written. He suggested the committee consider VANCE's proposal (EXHIBIT N). If the tools are taken away from the judges, they will have no control over the people. Rehabilitation factors should be considered. People who cannot afford to attend court ordered driving school may be held in contempt of court. Sentences for second offenders should be discretionary rather than mandatory. Most of the second offenders (8 out of 10) are chronic alcoholics. These are the type of offenders who once out of jail do the same thing again. PITCH stated warrants are issued when an offender does not attend court or court school. PITCH stated he was not really an opponent of the bill but wanted the committee to be aware of the Judge's problems.

MIKE MCCABE, Justice of the Peace, was opposed to the bill as written. MCCABE stated the average burglary results in a loss of \$500. The average traffic fatality results in a loss of \$250,000. For every 2,000 DUI offenders only one is actually arrested. The bill does not address the problem. Regardless of the punishment the people will continue to drive. MCCABE felt that 24 hours in jail is nothing.

MCCABE stated that a district court judge has ruled that sentencing a person to Lewis & Clark County jail for more than a few days is cruel and unusual punishment because of the deterioration of the jail, and that it does not meet federal standards.

It is a privilege and not a right to drive a car. The bill should be amended to state that the first offense would be an automatic suspension of his drivers license for a period of 30 days. On repeat offenses the punishment should be increased.

MARCELL TURCOTT, Montana Magistrates Court, stated he was neither for nor against the bill. Four years ago the legislature took away the best tool available - \$500 fine and six months in jail. That tool was held over DUIs to have them go to school at Galen. TURCOTT was interested in being involved in a subcommittee on the bill.

There were no further opponents.

In closing REP. VINCENT stated the committee should consider this bill with the other bills of similar nature. REP. VINCENT stated he was somewhat disappointed with the testimony concerning what judges used to have as an effective tool. He questioned whether it was utilized effectively when it was in effect.

Alcoholism cannot be used as an excuse to avoid responsibility to society. Sooner or later everyone needs to be held accountable for their actions. Twenty four hours does not offer a quick remedy for alcoholism but it helps place an offender in the process. There are provisions for rehabilitation in the bill that the courts can implement. Before rehabilitation can occur the drunk driver must realize that he is wrong.

REP. VINCENT felt the medical escape clause was good. Coming from a family of three chronic alcoholics, REP. VINCENT is aware of the problems. Drinking is a choice and a right; but drinking and driving is wrong and is an infringement on the rights of others.

REP. KEYSER stated he wanted to testify as a proponent of the bill, but was detained in another meeting.

REP. HANNAH was in support of the bill. He asked if alcoholism is a disease. KING stated the American Medical Association has recognized it as a disease. HANNAH stated he does not feel it is a disease and that we are within our rights to put someone in jail. If it was a disease it would be comparable to putting a person with polio in jail. KING stated the alcoholic is the last one to know he has a problem.

REP. J. BROWN asked what the cost of court school is and who pays for it. MCCABE stated the cost three years ago was \$50.

Today it is \$125. If the person cannot pay the cost the person goes without the schooling. The cost varies throughout the state. In Missoula, Cascade, Ravalli and Cascade the cost is \$75.

CHAIRMAN BROWN asked about the problem of overcrowding in Montana's jails. Previous testimony has indicated judges might be reluctant to send offenders to jail because of overcrowding. REP. VINCENT stated it is a concern but we should not solve the problem by negating our responsibility. In California a referendum that would appropriate millions of dollars to establish a prison was passed. The people had the choice of either building a new prison or letting the guilty not pay for their crimes. Gallatin County has recognized the need for better jails. It would be worthwhile for the legislature to help out.

REP. SPAETH asked if the 24 hours is from when the person is apprehended or when the court sentences him. REP. VINCENT stated his intent would be after sentencing. VANCE replied the statutes provide that people are given credit for time served.

REP. ADDY stated he was the victim of a drunk driver and he agrees with the problem. It seems there is a question as to whether the prosecutor or the judge should have discretion. WING stated it works both ways. Instituting mandatory minimum sentences removes some of the judge's discretion. There are some cases that the prosecution would want to dismiss the case rather than put someone in jail. On the other hand, prosecutors have always had a lot of discretion and probably always will. If an offense provides for mandatory jail time, charge bargaining will undoubtedly be discussed. Many people will not plead guilty if they know they will be in jail. Prosecutors will have to decide if there is enough evidence to go to trial or not. REP. ADDY asked if the judge or the prosecutor is subject to the most scrutiny. WING stated the judge is.

REP. VINCENT stated some of the concerns of the committee will be negated when it has all the drinking bills before it. The only evidence needed to convict a person is the chemical test of 1.0 alcohol in the blood.

FISHER stated that although the jails are full, so are the hospitals and the cemeteries. The people would like offenders prosecuted. If people disobey the law, they must be dealt with. A judge is better equipped to handle it.

REP. FARRIS stated in Great Falls a recent bond issued failed for the building of a new jail. There comes a time when the property owners say no.

REP. SPAETH asked if this would solve or just reduce the problem. WING stated if it was reduced even slightly it would help out. It cannot be eliminated.

REP. ADDY asked if the burden of a jury trial increases will not the prosecution be forced to charge bargain more. WING stated that could be a consideration. However, she would rather drop a less important case than to say they just don't have time for a DUI case.

REP. PISTORIA noted he would make information available to the subcommittee concerning Florida and California laws.

REP. VELEBER asked how the bill would relate to drugs. KING stated it is hard to identify the usage of drugs.

REP. VINCENT stated a bumpersticker that came out of a junior high school was "Drunk drivers bring families together - at the funeral".

The hearing on the bill closed. EXHIBITS O and P were given to the committee.

HOUSE BILL 238

REP. VINCENT, sponsor, stated House Bill 238 is an act requiring certain merchants to provide notice of materialmen's liens or waivers of those liens to owners of private dwellings and reduction of the lien amount upon failure to comply. REP. VINCENT offered EXHIBIT Q, amendments to the bill.

REP. VINCENT stated there is a problem in the construction industry. He related the case of a homeowner who had a furnace installed costing \$2,500. The contractor for the job supplied a furnace. Upon completion of the job the homeowner paid the contractor the balance due. In this instance, the contractor did not pay the materialmen for the furnace. The materialmen went to the homeowner for payment of the furnace by placing a lien on his home until payment is received. This put the homeowner in a bind because he had to pay twice for the furnace.

Although there is an argument that the materialmen must be protected, the consumer does not have the same type of protection.

REP. VINCENT stated this bill would make a contractor provide a waiver to the owner stating that a lien may be placed on the home with regard to material, machinery or fixtures. This waiver would be shown and signed before any actual work began on the home. This way, the homeowner can decide whether or not he actually wants the work done taking all points into consideration.

The original bill took away the materialmen's protection. The bill as amended in EXHIBIT Q would protect the consumer and the merchant.

The sponsor noted that the cosponsor, Rep. Fabrega, was a materialman. The other sponsors are Representatives from each stage of the work (contractor, materialman, homeowner, consumer, etc.).

MARILYN HANSON, Bozeman was in favor of the bill. The incident described above concerning the furnace actually happened to her family. EXHIBIT R is a letter to Representative Addy concerning the problem the Hansons had.

ROGER TIPPY was also in favor of the bill as amended. During the June hail storm in Helena, the roof of TIPPY's home suffered much damage. A new roof had to be installed. A contractor reroofed TIPPY's home for \$900. The contractor, however, did not keep his account current with the materialman. The materialman placed a lien on his home.

A Montana Law Review Article of 1959 on liens discussed a Supreme Court Case, Hoit V. Cascade Electric. In that case court ruled that the contractor becomes the homeowner's agent. According to the ruling if the materialman sells supplies to a contractor working a homeowner a contract has been formed under agency principles between the homeowner and the materialman. The materialman has no obligation to go to the contractor for the balance due, but instead may go directly to the homeowner. TIPPY was very disturbed about this ruling and the lien placed on his home.

JOAN TOOLE stated 20 years ago a similar event happened to her family. Her family bought a house and paid the contractor for it. They were not aware of any liens filed because the builder left the country. The liens totalled \$12,000. Their attorneys could not do anything. The house was sold and taken off their property.

There were no further proponents.

BLAKE WORDAL, representing the Montana Hardware and Implement Association, spoke against the original bill. WORDAL read his testimony from EXHIBIT S.

MILO STORDAHL, United Building Center, also spoke in opposition to the bill. The original bill was bad. He agreed the consumer needs some protection. He stated that he has filed liens that have caused the consumer to pay twice for services rendered. However, usually when a contractor of this nature offers his services so cheaply, it is because quality work will not be performed. When the consumer pays twice it is usually not more than the price the job is actually worth if performed by a quality contractor. His business has a brochure that warns the general public not to pay twice. Materialmen must file liens because if they don't their businesses suffer the loss. In one instance his business decided to go to court; 14 months later they are still in court. The judges do not have time to settle these matters. STORDAHL stated if all the contractors were required to be professionals, the bad contractors could be eliminated.

JOHN GRANT, representing Kermit A. Kruse, Inc., was also opposed to the legislation. GRANT stated he was the attorney who filed the lien against Tippy's home. A notice was placed in the local papers warning the public about their rights. EXHIBIT T. The roofing industry and the materialmen did a tremendous business during that time.

GRANT stated some situations may have been prevented. The protections available are lien waivers. Also, the homeowner should make the check payable to the materialman rather than the contractor. The homeowner should also require the contractor be a licensed professional.

TOM WESTER, Sharbano Construction also spoke against the bill. He stated the bill does not represent the views of the contractor. The bill's policy is totally arbitrary. This could cause confusion to the consumer. A consumer who owns property that is not occupied properly would not be covered. The real issue should be a statement of obligation and responsibility of the consumer and not the materialman in dealing with the contractor. The problem is caused by the consumer making a bargain at a price that is too low. Thus the work will not be done by a professional.

WESTER stated that it is required property owners are notified that a lien(s) are filed on their property. Therefore, the situation of TOOLE's home would not happen today.

The materialman uses every "exhausting avenue" against the contractor before coming to the homeowner. He has 90 days to file the lien. He must file the lien by that time or he loses his entire protection.

JOHN HOLLOW, Montana Home Builders, was against the bill. He was not sure if the bill as amended would address the problem. A notice as in the bill, might provide protection. He stated he was interested in working with a subcommittee on the matter.

MIKE SATHER, United Building Center, opposed the bill. The lien waiver would possibly place the situation in favor of the contractor. The materialman could lose a great deal of money.

FRED ROBINSON, Peterson Lumber Company stated there is a misconception that the building supply people want to charge twice for their supplies. That is simply not true. He stated he had to try and collect twice on a couple of cases. A lien was filed on the consumer's property.

One time a contractor came into his store for kitchen cabinets. He stated where the cabinets would be installed. The contractor did not pay the store for the cabinets. Eventually the store was forced to go to the address for payment. However, the contractor had not placed the cabinets in that particular house. The store was out for the price of the cabinets.

ROBINSON stated it is now mandatory that property owners are informed when a lien is filed on their property.

TOM SIMKINS, Simkin Hallin Lumber Company, spoke against the bill. Most contractors are good people. Placing the contractors on a cash basis, however, would put most of them out of business. They simply do not have the capital to pay for a job before it is completed. The lumber yards do not extend credit to just anyone.

OWEN ROBINSON, Grogan Robinson Lumber Company, stated there is probably a solution to the problem. The homeowner is the victim currently. This bill would shift the burden to the lumberyards. It is a shift of responsibility from one person to another. He was also interested in serving on a subcommittee.

JIM NELSON, De Voes Builders, was opposed to the original bill and the amended bill. He was also interested in serving on a subcommittee.

There were no further opponents.

In closing REP. VINCENT stated the real issue is fairness. The problems in the system should not fall on the consumer but they shouldn't fall on the materialman either. If we accept that then the question is who is going to bear the burden. If the contractor shows the consumer a waiver stating the situation, then the consumer can decide whether he wants the work done by that particular contractor.

REP. VINCENT urged the committee to investigate the possibility of some type of notification that the general public would understand. Then, let the consumer beware. EXHIBIT U was given to the committee.

CHAIRMAN BROWN stated a subcommittee would be assigned to study the problem and make possible recommendations.

The hearing on the bill closed.

HOUSE BILL 331

REP. PISTORIA, sponsor, stated House Bill 331 would establish the offense of criminal possession of a toxic substance. REP. PISTORIA gave the committee EXHIBIT V, which is the California paint sniffing law. REP. PISTORIA felt the bill should be amended as in EXHIBIT W to comply closer to the California statute. He felt this statute does a better job than the proposed Montana law.

Paint and hardware stores have begun placing spray paint and paint thinners behind the counters. The Cascade county attorney feels a law in this area is needed. The law enforcement in Great Falls is also in favor of the bill.

GLADYS VANCE was in support of the bill. VANCE gave the committee EXHIBITS X and Y concerning birth anomalies of the fetus related to parents chemical dependence; and a letter concerning the problem on the reservations. EXHIBIT Y also details arrests that have been made for paint sniffing in Great Falls.

In Great Falls there is an abandoned warehouse known as the "Paint Palace" in which chemical abusers go to sniff substances. The Fire Department has closed the building for potential fire hazard. A policeman was shot there in 1976 investigating two paint sniffers.

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VANCE hoped this bill would eliminate the problem. It is most prevalent among lower income families.

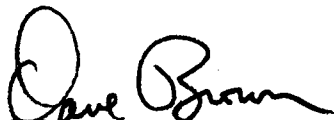
There were no further proponents.

There were no opponents.

The committee did not ask any questions.

The hearing on House Bill 331 closed.

The meeting adjourned at 12:20 p.m.



DAVE BROWN, Chairman



Maureen Richardson, Secretary

Exhibit A
HB 234
1/26/83

WITNESS STATEMENT

Name Chip Edmann Committee On Judiciary
Address Helen Date 1/26/83
Representing MSBA Support
Bill No. HB 234 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Currently school district trustees are subject to punitive and exemplary damages - but the board itself is immune.
2. When lawsuits are brought against school boards trustees are included often just to get at the punitive and exemplary damages.
3. This is an unfair burden to place on unpaid public servants -
4. They would still be liable for actual damages ^{always} and punitive & exemplary damages when they are acting outside the scope of their duties.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

Exhibit B
HB 234
1/26/83

WITNESS STATEMENT

Name TAMARA "TAMMY" HALL Committee On Judiciary
Address 6734 Gosh Hill Rd Bozeman MT Date Jan 26/83
Representing School District 7 Support X
Bill No. 234 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Bill is Legally Sound
2. Bill is fair
3. Bill is crucial to local control of schools.
4. Board members won't run

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

NO 234
Exhibit C
1/26/83

WITNESS STATEMENT

Name Ronald B. Matton Committee On _____
Address 814 W. Washington Date 1/26/83
Representing School Dist #1 Support
Bill No. 234 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Support and Concise with "Tommy" Hall and Chip Cardman's Testimony
2. 1. Community members are fearful that they could and be sued for damages and incur legal expenses that would cause hardships upon them personally.
3. 2. When school personnel are sued, trustees
4. are often included in any suit that includes exemplary + punitive damages even though they may not be directly involved.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.



OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL
HELENA, MONTANA 59620
(406) 449-3095

Ed Argenbright
Superintendent

January 26, 1983

HB 234
Exhibit D
1/26/83

TO: House Judiciary Committee
FROM: Rick Bartos, Attorney
Office of Public Instruction
RE: House Bill #234

The Office of the State Superintendent of Public Instruction supports House Bill #234 an act to provide that the trustees of any school district when acting in their official capacity are individually immune from liability for exemplary and punitive damages; amending Section 20-3-332 MCA."

This particular legislation would provide the necessary limited immunity from exemplary and punitive damages against school board members. School board members serve in the capacity as trustee volunteering their time, expertise and assistance. They are engaged in perhaps one of the most challenging and important decision making bodies in this state, governing local school districts.

Because of the potential lawsuits arising from their actions that stem from a variety of sources including civil rights litigation, special education litigation, state and federal statutory rights and regulations and common law tort, school board trustees are open to a unreasonable degree of liability for all activities that occur in a school district. School district board of trustees acting in their official capacity must have the protections of immunity from exemplary and punitive damages which results from these particular lawsuits.

Immunity from exemplary and punitive damages in a lawsuit does not hold a school board of trustee harmless or immune from civil action. Actual or compensatory damages can be recovered against school board trustee members and they are subject to litigation. However, because of the number of school districts in Montana, just under 700 districts, it is our position that whatever protections, however limited the protections may be, the legislature should recognize the Boards awesome responsibility and their degree of exposure to liability and protect these people from punitive damages, which have ranged in other states well into the millions of dollars.

RB:dkk

Exhibit E

HB 376

1/26/83

AMEND HOUSE BILL 376

1. Page 3.

Following: line 6

Insert: "(6) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Visitation rights granted under this section terminate upon the adoption of the child by a person other than a stepparent or a grandparent."

HB 265
Exhibit F
1/26/83

EXPLANATION OF HOUSE BILL 265
CLARIFYING THE QUALIFICATIONS AND COMPENSATION
OF CONDEMNATION COMMISSIONERS IN EMINENT DOMAIN PROCEEDINGS
(SPONSORED BY REPRESENTATIVE McBRIDE)

As a result of a performance audit of the Highway Department's construction and preconstruction activities, the Legislative Audit Committee recommends that specific qualifications for condemnation commissioners be deleted and that the method of compensation for the commissioners be clarified.

Current law states that the qualifications for a condemnation commissioner include: being between 18 and 70 years of age, being in possession of natural faculties, of ordinary intelligence and not decrepit, and being assessed on the last assessment role of a county in the judicial district in which the action is pending.

These qualifications for being commissioner do not appear to be reasonably related to the function of a commission member. In fact, the age qualification conflicts with statutes prohibiting discrimination on account of age. Therefore, the committee recommends repealing these qualifications.

There is also no provision in the law for payment of commissioners for their service. The usual payment for condemnation commission members is \$200 per commission hearing; however, the department has paid up to \$400 per commission hearing for their services.

The law also does not state who is responsible for the payment of condemnation commissioners. The department has been paying the compensation of condemnation commissioners based on a 1951 Attorney General's Opinion which states condemnation commissioners must be paid by the party seeking to condemn the property.

This bill establishes a maximum of \$250 per hearing including expenses for compensation of a commissioner. It also specifies that the compensation of the commissioner the party nominated will be paid by that party and the compensation of the third commissioner will be split between the parties. In addition, if the decision of the commission is appealed and the appealing party receives less than the amount recommended by the commission, then the appealing party shall pay the compensation of all commissioners. If both parties appeal the compensation is split.

HB 250
Exhibit G
1/26/83

WITNESS STATEMENT

Name DORIS FISHER Committee On _____
Address 1815 SOURDOUGH RD. Date 1-26-83
BOZEMAN, MT.
Representing MADD Support
Bill No. 250 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. MANDATORY SENTENCING ONLY FAIR
DETERRENT FOR DUI CONVICTIONS
 2. BEHAVIOR ONLY CHANCES WHEN IT HAS TO !
 3. SOCIETY HAS RIGHTS TO SAFETY.
 4. JAIL SENTENCE TOUCHES THE EGO —
MONEY IS FORGOTTEN.
- STOP BAD BEHAVIOR FIRST TIME — VICTIMS
CAN ONLY DIE ONCE —

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

MADD

NB 250
Exhibit H
1/26/83

MONTANAN'S AGAINST DRUNK DRIVING

615 So. 16th
Bozeman, MT 59715

JANUARY 1983

OUR MONTANA LEGISLATORS:

Anabelle Phillips

Nancy Vandeventer

Ray Houghton

Howard Boxmeyer

Doris Fisher

All of the members of Montana Against Drunk Drivers join together to ask your support of DUI proposed legislation. We have the enthusiastic support of the PEOPLE. Law enforcement is really doing their job and all of you certainly helped the cause tremendously by passing HB 364, the DUI sentencing bill last time. The problem is in the Court! There are holes that need to be plugged if we are to give the drunk driver the idea that---

IF YOU DRINK AND DRIVE, YOUR CHANCES OF GETTING CAUGHT ARE GREAT AND YOU WILL BE PROSECUTED!

Only if this attitude exists, will we have a deterrent.

Judge Joe Gary of Gallatin County says, "This is a middle class crime. It will respond to a deterrent. You only have to pick up one lawyer, one college professor, one frat brother, one plumber and all of his peers will realize that they could get caught. This is one instance in which I feel that mandatory sentencing will have a real deterrent effect."

PEOPLE said: "All of this noise about drunk driving wouldn't work and no law could help. Drinking is part of being a Montanan!" The good news is: 84 MONTANANS ARE ALIVE IN '83! VOTING, PAYING TAXES AND ADMIRING THE BLUE SKIES! 84 is the difference in life loss between 1981 and 1982 in auto fatalities. The awareness, the enforcement and the new law are working!

We have all heard, "The jails are full, we can't lock up drunks!" MADD says: "The cemeteries and hospitals are full too!" At a MADD rally in Billings, a man stood up and said, "Let's let all the robbers go and lock up the killers!" A cute senior citizen stood up and asked, "Couldn't the drunk drivers take a number and serve their time when there was a vacancy at the jail?" The people have answers to all of the excuses for not prosecuting drunks !!!

We need your support for:

Mandatory first offense sentencing---The crime is the same for all.

Illegal per se: It is against the law to drive with a blood alcohol of .1. Nobody can do it safely.

Administrative per se: A refusal suspends the license for 6 months. There will be less incentive for refusal.

Early Suspension Law: The license has to be taken at the time of the arrest for DUI, instead of months later; maybe after another arrest or accident.

Funding for 20 Breathalizers: Law enforcement needs tools to do the job. These will cost \$100,000. Drunk drivers in Montana cost \$400,000 per day in property loss. The breathalizers will be used for years---not one day.

PLEASE HELP!

Sincerely,

Tomie Fisher

HB 250
Exhibit I
1/26/83

**PUT THE BRAKE ON
DRUNK DRIVING**

NB 250
Exhibit J
1/26/83

January 19, 1983
Box 1200
Belgrade, Mt. 59714

Editors, Bozeman Daily Chronicle
32 S. Rouse Ave.
Bozeman, Mt. 59715

Dear Sirs:

Your Editorial of January 19th concerning the rights of drunk drivers does indeed raise some questions about peoples' rights. Let's talk about some of the rights people should have and about the wanton violation of those rights by drunk drivers.

On August 12, 1980, my parents Ed and Sid Clarkin, my sister Holley, my daughter, Janelle and her friend Rhonda Van Diest were on their way to Bozeman on Old Highway 10 when a drunk driver crossed the center line and hit them head-on. My Dad was killed instantly. My Mother died before she could be transported to the hospital. The three girls suffered broken bones and internal injuries requiring extensive hospitalization, surgeries and medical and dental treatment which continues to this day.

These victims had a right to expect to arrive safely at their destination. A drunk driver violated this right.

The girls' injuries were so extensive that extended hospitalization and homecare including tutors for their schooling was required for several months.

The taxpayers of the school districts involved paid for the tutors.

The taxpayers also paid for the defense and court costs for the trial that ensued. Taxpayers have a right to better use of their money than paying for an accident that didn't need to happen.

The people who stopped immediately after the accident to render aid were confronted with the gruesome and horrifying results. One woman told me that she suffered terrible nightmares for weeks after the accident. These people had a right to be spared the horrible, upsetting sight of that accident.

And what about the customers in my Dad's drugstore. They had a right to expect his continued professional care and friendship for many years to come.

What about the right to a pleasant retirement after nearly forty years of hard work and community service? My parents had a right to their retirement that was destroyed by the drunk driver.

What about the little grandchildren who were too small to really grasp the tragedy? They had a right to the loving and precious relationship that existed between them and their grandparents. That can never be replaced.

We could talk forever about the rights people have or should have. Everybody is so busy talking RIGHTS that they neglect to talk RESPONSIBILITY.

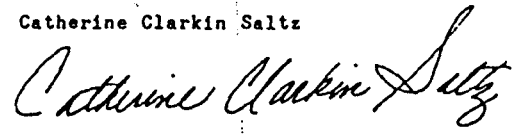
What is really important is that we recognize this terrible problem and get to work on solving it. Thank God there are people like those in MADD who are actively involved in getting changes made in the laws.

If people don't like the proposed legislation, they should get busy and propose something better.

The bottom line is to get the drunk driver off the road. Their lives as well as ours, are at stake. They have been a public menace causing a private hell for too long.

The only people for whom this question of rights is mute, are the DEAD.

Catherine Clarkin Saltz



WITNESS STATEMENT

NB 250
Exhibit K
1/26/83

NAME Barbara Ann Smith BILL No. 250

ADDRESS 4321 N. 9th Bayman Mtn DATE 1/26/83

WHOM DO YOU REPRESENT MADD

SUPPORT OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Consider the waste of lives. One's
wishes have been injured to the point
where they are dependent on the
family and state for care and
rehabilitation. Montana has lost
many vital people to unnecessary
injuries. The state has no adequate
rehab. centers for those who need
it. More people have been injured
by drunk drivers than in all the
Vietnam war. (Gran Newsweek 11/82).
In the Vietnam war men became
maimed for their country. The
injured of Montana were not
maimed for any reason other
than someone's love of the bottle,
and lack of discretion.

HB 250
Exhibit L
1/26/83

WITNESS STATEMENT

Name Mrs. Mary^{CO} Doubek Committee On Judiciary
Address 7645 N. Montanacire Date 1/26/83
Representing myself, friends, family MADD Support
Bill No. HB#250 Oppose

(wife, mother of seven, grandmother of ten teacher)

Amend if medical excuse clause is inserted I suggest a comparable penalty to serve as a deterrent.

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. I think this bill would be a strong deterrent to drinking too much & then driving. Instead of considering this 24 hr. mandatory jail sentence harsh for this, which is an offense, how about considering the harsh sentence, the victim of drunken driving & receives. Really, in the long-run the driver is benefitted because this bill if enacted into law could save the driver himself from possibly committing a major offense later.
2. His bill would place responsibility & foresight on the driver which is a plus rather than the hindsight after an accident which is a definite minus.
3. It's only fair to announce "loud & clear" what the penalty would be for an offense, the penalty should fit the crime & I think this one does. Please support HB #250. Why would people be reluctant to support this bill? The man who invented the Electric Chair was the first one to sit in it. Would people be afraid they might get caught & spend 24 hrs in jail? This would help people to look ahead & see the consequences of their actions. Please support HB #250.
Thank you

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

an ounce of prevention is worth a pound of cure.
He talks about "tough love" today. This is tough love.
FORM CS-34
1-83

HB 250

Exhibit M

1/26/83

WITNESS STATEMENT

Name BETTY WING Committee On JUDICIARY
 Address 329 So 2nd West, MISSOULA Date 1/26/83
 Representing MISSOULA COUNTY TASK FOR THE PREVENTION OF DRUNK DRIVING Support X
 Bill No. 250 Oppose _____
 Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. The task force supports HB 250 with 24 hour jail time as a preventative measure. It will send a message to the people of the state that DUI is to be taken seriously and will be treated as such.
2. a short jail sentence is a very effective means of punishment and prevention. a person who spends time in jail rarely commits the offense a second time.
3. I request an amendment to provide a maximum jail sentence, preferably 90 days for first offense and 6 month for second offense.
4. Please compare the 24 hour maximum to penalty for other offenses - 90 days for reckless driving, 10 days for all other traffic offenses.

Please compare the 24 hour maximum to other states.

North Dakota	3 days	New Mexico	30 - 90 days
South Dakota	30 days	Idaho	to 6 months
California	4 days - 6 mo	Texas	3 days - 2 year
Wyoming	30 days		
Washington	1 day - 1 year		

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

NB 250
Exhibit N
1/26/83

TESTIMONY JANUARY 26, 1983
GLADYS M. VANCE, IN SUPPORT OF HB250

Ladies & Gentlemen of the House Judiciary:

I am Gladys M. Vance, a Justice of the Peace in Cascade County and City Judge in Belt. I have been in office for 4 years. In 1982, of the 5 other Judges in Cascade, Lewis & Clark, Choteau, Judith Basin and Teton Counties, comprising our particular Patrol Division, 133 DUI's were documented and I handled 44 of them. Add 3 from Belt and 31 from Cascade County Sheriff's and you have 78 - multiplied by 4 and you have 312. I believe that should adequately demonstrate that I have had some experience in this area of concern.

I am here in support of HB250; but I would ask you hear me out, as I share with you my experiences and frustrations, and consider a possible amendment or revision to the bill to more adequately deal with drivers who drink.

I particularly am going to ask you to consider a six-month period of time which the Court could suspend on certain conditions and would have jurisdiction (or the power to control) on the first and second offenses.

I support the mandatory language change from "may" to "shall" if we are going to have a mandatory sentence because there is a lot of "judge shopping" without it. Even with the mandatory language, we will get impassioned speeches regarding claustrophobia, social disgrace, etc., causing greater stress on the defendant's mental well being. And, then, there always appears the bad backs and the neck braces at time of sentencing. I, personally, will not consider not imposing the jail time without a supportive medical opinion and then - only then - will I consider trading the jail time for treatment.

In seeking that medical opinion, we uncover many underlying reasons why that person has turned to alcohol and in that process alone, we are intervening in that person's life by helping them discover why they are drinking, let alone driving. Let me share with you - one war story - of a 26 year-old beautiful, young woman who looked 40. She was before me for DUI - Second Offense, thus a possible 30 days in jail or a minimum of seven. Realistically, three if her

attorney fights hard enough. I ordered a psychological evaluation prior to sentencing and we found that underneath it all, this young woman was not an alcoholic but had been raped two years earlier; the assailant was not convicted, and my defendant was hell-bent on self-destruction through the bottle, skipping from one bar to the other, searching for what - she knew naught - because she was not dealing with her feelings of self-worth or non-worth, however you choose to look at it. Yes, I was happy to order her to treatment in a stress treatment center in California in lieu of jail.

I am concerned about the consecutive requirement. Number One because we must statutorily give credit for time spent in jail so that the defendant on the surface looks like he is only being required to spend a lesser time and perhaps has given the impression of not being equal.

When it comes to spending seven consecutive days, we are talking about perhaps costing that person his job because very few have vacation or sick time if employed. Believe me, it's a lot tougher to know you have to spend your next days off over a period of time in jail not implying that additional jail time will not be effective, but, I am saying that jail time alone is not enough.

I am sure you are trying to deal with the inequities in the system such as - deferred prosecutions (for which there is no statutory provision) and deferred impositions of sentence (which is statutorily forbidden on DUI's); but, mandating a numerical jail time will increase those inequities. If Judges and prosecutors insist on ignoring the law, let the voters deal with them at the next election; don't let the actions of a few deprive or jeopardize the efforts of the rest of us.

It is realistic to mandate a certain number of days in a certain order when our jails are already full. We are actually - at this time - having to consider when to sentence depending on our jail capacities. That's the real world folks.

Now, I think we all agree that alcoholism is a disease - one that causes us to lose control of our minds and our bodies.

Granted, DUI's are not all alcoholics - but, the majority are - they just haven't been caught driving. We are not dealing with the

staggering skid row bum as a DUI image tends to portray in our minds. We are dealing with people of all ages, with jobs, responsible ones with families - and, if we can intervene in their lives - they will keep those jobs and those families and live a long productive life.

What happens when a person walks out of Court after sentencing as it is now? After they serve their 24 hours or 30 days? Nothing, absolutely nothing, as far as the Court is concerned. Why is that? It is because the Court has lost its power or, in legal terms, jurisdiction. Even if the Court has suspended part of the fine on certain conditions and the defendant doesn't meet those conditions, all we can do is bring them back on a civil contempt warrant, threaten some more, give them another day in jail and add up to \$100 onto the balance due and they are off and driving drunk until the next time. And - again the Court has lost its power.

Can we do anything with a disease in 24 hours or even 30 days? We can usually go to bed with the flu for a couple days and it's over. If we have a virus, it might take a full 30 days to recover.

But, if we are dealing with alcoholism - we are looking at an incurable, terminal disease - just like cancer - and we all understand cancer. Alcoholism grows - just like cancer - and, we cannot cure it. The person will have it all their remaining life.

We can, however, teach that person how to control the disease and regain control of their life. - But, we can't do it in 24 hours or even 30 days - or sometimes even six months which I would implore you to consider.

There is also, always those who will drink and drive without licenses or insurance or anything else and for those people, I say lock them up and throw away the key!

Give the J.P. Courts six months to suspend on first and second offenses - six months to intervene - six months to educate - or go to jail. Support, aftercare and follow-up are so terribly important after treatment or they fall back in the same old pattern, with the same old crowd - and, unfortunately, many times go back to the same using family. Court school takes 5 weeks. Treatment takes 28 days.

Give us six months to hold over their heads - over their conduct and that is more of a deterrent - more of a threat than any 24 hours or

seven days. We don't forget quickly six months of being accountable whereas we do forget 24 hours and, yes, even seven days.

Give those of us who would like to try to help put a stop to drivers who drink, the tools that we need to intervene in these people's lives.

You have given us six months for someone who strikes another; who damages another's property; who writes a bad check. Certainly a drunk driver can cause as much if not more injury to another - even death. Certainly a drunk driver causes more damage to another's property; and, I think you should all relate to that statement (it's called "hit & run" 6, 7, 8 vehicles at a time).

You have given us 90 days for a first offense reckless driver; mandatory 10 days and possible six months for a second offense reckless driver. Doesn't common sense tell us that a driver under the influence poses as much - I say more - of a threat to the rest of us as a reckless driver? You have given us six months for three traffic misdemeanors within a year (speeding, stop sign violations).

I know of no legal, moral or any other reason why we cannot consider a possible six-month penalty for a DUI.

Thank you very much for listening to my frustrations. I appreciate your consideration and I also understand your dilemma and your sincerity as you listen to all of us and sort through the mountains of paper trying to achieve a better world.

May I share with you a prayer that I used long before I discovered it is the prayer of the alcoholic.

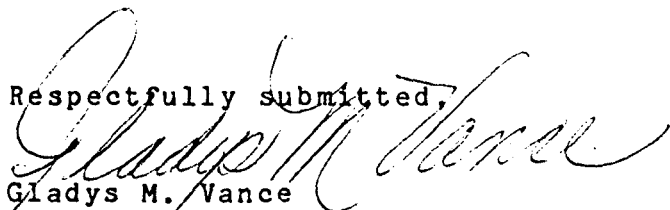
God grant me the serenity
To accept the things I cannot change,
Courage to change the things I can,
And wisdom to know the difference.

Ladies and Gentlemen, you have the power to bring about change; yes, it will take courage; but together, understanding public pressures and separating what looks good on paper but doesn't work and channeling it towards a workable plan perhaps we can achieve that elusive quality known as "justice" for all.

I have attached to your copies a sample of the proper wording to assist you in making your decision. If any of you have any questions,

I will be happy to answer them.

Respectfully submitted,


Gladys M. Vance

Justice of the Peace Cascade County
761-6700 extension 480

Suggested wording for amendment:

- (1) A person convicted of a violation of 61-8-401 shall be punished upon a first conviction by imprisonment for a period of not more than six months; 24 hours of which may not be suspended or deferred; and shall be punished by a fine of not less than \$100 or more than \$500. The jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.
- (2) On a second conviction, he shall be punished by imprisonment for a period of not more than six months; () days of which may not be suspended or deferred; and shall be punished by a fine of not less than \$300 or more than \$500. Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

NB 250
Exhibit O
1/26/83

Proposed Amendments to HB250

1. Page 1, line 16,
Following: "te"
Insert: "not less than"

2. Page 1, line 16,
Following: "hours"
Insert: "or more than 30 days"

AmendHB250/BCDII

MONTANA
DRINKING AND DRIVING STATISTICS

Exhibit P
NB 150
1/26/83

FATALITIES 1982

29 - Below 18 years (teenagers)

38 - 18-19-20 year olds

33 - 21-22 year olds
100

HAD BEEN DRINKING:

14 of 29 (below 18 year olds) 48%

23 of 38 (18-19-20 year olds) 61%

22 of 33 (21-22 year olds) 67%

1981

338 Fatalities

67 were teenagers (37 of these teenagers HBD*)

20% of all fatals were teenagers

55% of all teenagers killed HBD*

1982

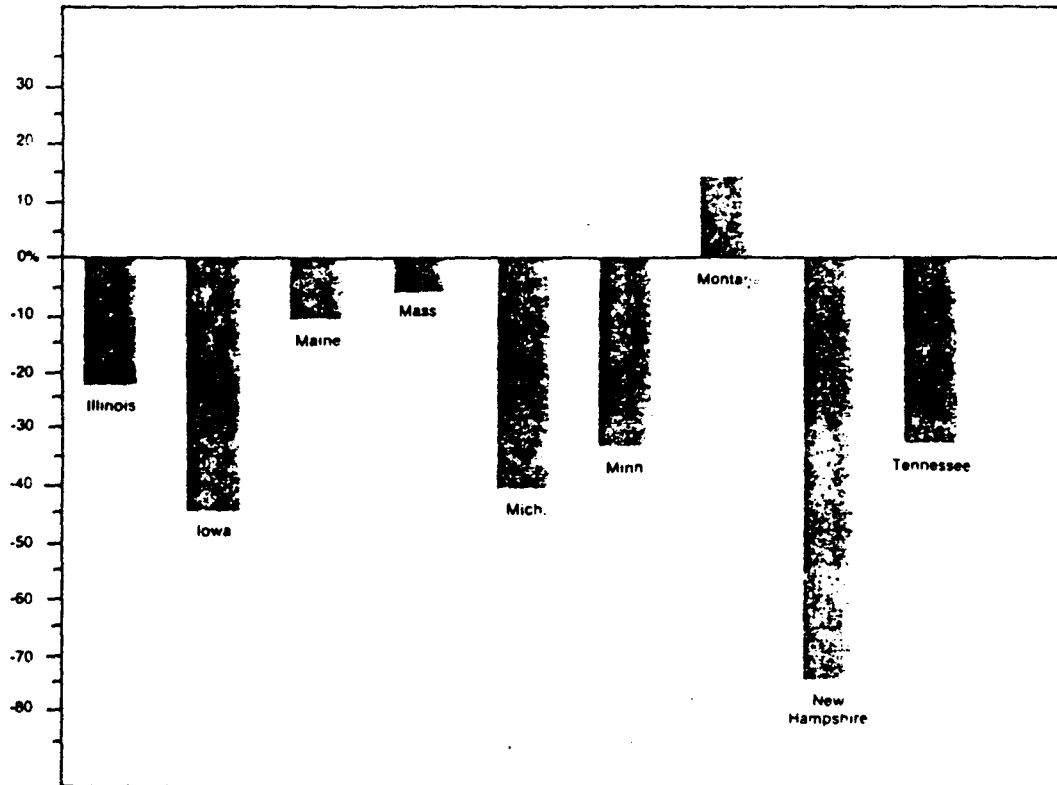
249 Fatalities

53 were teenagers (31 of these teenagers HBD*)

22% of all fatals were teenagers

60% of all teenagers killed HBD*

Percent Changes in Driver Involvement in Nighttime Fatal Crashes After Increases in Legal Minimum Drinking Ages



Teenagers in crashes

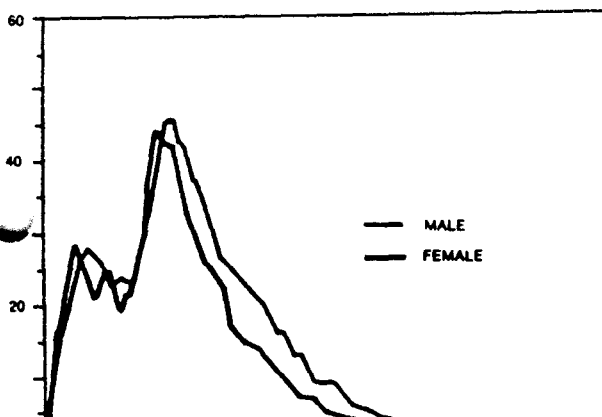
Motor vehicle crash injuries impose a huge burden on Americans of all ages, but the heaviest burden falls on the nation's young people. *Crashes are the number one killer of teenagers.* Nearly half of all deaths of 16-19 year olds are produced by injuries sustained in motor vehicle crashes. Teenagers 16-19 years old comprised 8 percent of the U.S. population in 1977, but accounted for 17 percent of all motor vehicle-related fatalities. More deaths per licensed driver are associated with crashes of 18 year olds than with any other age.

This burden of crash injuries on the nation's young people has long been a concern of the Institute. During the past year, Institute researchers focused not

only on teenaged driver involvement in fatal crashes, but also on deaths of teenagers as passengers.^{16,31,32} How many 13-19 year olds are dying in crashes of cars in which the driver is a teenager? The Institute's findings are startling. *There are almost as many deaths of teenagers as passengers as there are of teens as drivers.* The majority of fatally injured teenaged passengers are in vehicles driven by their peers. **Most of these deaths occur in nighttime crashes, especially weekend nighttime crashes.** In addition, teenaged drivers are involved in disproportionate numbers of crashes in which occupants of other vehicles are killed, or in which nonoccupants such as cyclists and pedestrians are killed.

These findings indicate the magnitude of the problem, and they raise a number of fundamental policy questions. For example, should teenaged drivers be permitted to transport teenaged passengers? Should teenagers be allowed to drive between 9 p.m. and 3 a.m., when almost half of their fatal crashes occur? Should teenagers be permitted to operate the more hazardous motor vehicles, including those with the least crash protection? Whatever the answers to these questions, by a wide margin injuries associated with motor vehicle use are the major public health problem for teenagers in the United States—a problem that deserves far more attention than it has received.

Motor Vehicle Deaths as a Percent of All Deaths by Age, United States 1977



NB 238
Exhibit Q
1/26/83

PROPOSED AMENDMENTS TO HOUSE BILL 238 (introduced copy) - 1/26/83

- (1) Title, lines 4 through 9
Following: "ENTITLED"
Strike: Remainder of title in its entirety
Insert: "AN ACT TO REQUIRE CERTAIN MERCHANTS TO PROVIDE NOTICE OF MATERIALMEN'S LIENS OR WAIVER OF THOSE LIENS TO OWNERS OF PRIVATE DWELLINGS AND REDUCTION OF THE LIEN AMOUNT UPON FAILURE TO COMPLY."
- (2) Pages 1 through 2
Strike: rest of bill in its entirety following enacting clause
Insert: "Section 1. Merchant must provide materialmen's waiver or a notice. Failure to comply. (1) When a merchant sells to an owner of a private dwelling any materials, machinery or fixtures to which a materialman's lien as provided in Title 70, Section 3, part 5 may attach, the merchant shall provide the owner with a waiver by the appropriate materialman, or with written notice in layman's terms that the materialman may file a lien with regard to the material, machinery or fixtures.
- (2) For the purpose of this section: (a) "merchant" means the person, or his employee or agent, who sells the material, machinery or fixtures directly to an owner; and (b) "owner of a private dwelling" means the person who has legal title to or who is acquiring legal title to a building in which he resides and all facilities, fixtures, and accessories appurtenant thereto."
- (3) If a merchant fails to comply with this section and a materialmen's lien under Title 71, Chapter 3, part 5, properly attaches to the owner's private dwelling, then that lien must be decreased in the amount that payment for the material, machinery, or fixtures was made to the merchant.

HB 238
Exhibit R
1/26/83

1211 N. Pinecrest Dr.
Bozeman, MT 59715
January 22, 1983

Representative Kelly Addy
Capitol Station
Helena, MT 59620

Dear Representative Addy ,

We would like to strongly encourage your full support of House Bill #238, introduced by Vincent and others. The present law does nothing to protect buyers from an entirely unknown double jeopardy.

We answered an add in the local newspaper about an energy efficient furnace and hot water heater. The plumber dealer had lived in Bozeman ten to fifteen years. We made arrangements for installation of the furnace and hot water heater. Upon installation and about a weeks satisfactory operation, he requested full payment. We gave him a check (\$2500.00) and received a receipt stating he had been paid in full (March, 1982). In May, we received a certified letter from the lawyer of the distributor with a mechanics lien against our house and property. Although we paid the contractor in full, he had not paid his bills!

We hired a lawyer, who upon investigation, found out the contractor had started bankruptcy proceedings. Consequently, we are now having to pay the distributor \$2000.00 plus again. The "bankrupt" plumber is now back in business!

It appears to us that the distributor should have better knowledge of who he is allowing credit to and, therefore, should only be able to collect from the contractor! The third party should not be involved unless, of course, he hasn't paid the contractor to start with. Under the present system, the distributor can sell more products without a detailed look at the contractor because he can always collect from the buyer, even if the buyer does have to pay twice.

Another case, of which we have become aware, the couple is having to pay \$37,000.00 the second time. Their contractor had not paid the materials bill. The lady called the lumber yard to see why they had sold materials to a man who was a fraud and she was told they had looked up the couple's credit and knew they would be "good-for -the-money".

Please give this bill your utmost attention. A law this unfair cannot continue to ^{be} a law!

Thank you for your consideration.

Sincerely,

Thomas L. Hanson
Marilyn M. Hanson



**MONTANA
HARDWARE &
IMPLEMENT
ASSOCIATION**

HB 238
Exhibit S
1/26/83

3087 N. Montana Avenue
P.O. Box 4459
Telephone 406/442-1590
Helena, Montana 59604

The advocate for Montana's retail hardware and farm implement dealers

January 26, 1983

TESTIMONY ON HOUSE BILL 238

Mr. Chairman and members of the House Judiciary Committee. I am Blake Wordal, representing the Montana Hardware and Implement Association. I also appear before you today representing the Montana Building Material Dealers Association because their Executive Secretary, Mr. Irvin Dellinger, has been called out of the state this week.

Lien right laws, like water right laws, have their very beginnings with the foundation and building of this country when our forefathers were faced with the orderly, stable development of new homes, farms and commercial structures.

In fact, the first lien right law was drafted by Thomas Jefferson to respond to the concerns of laborers, contractors and suppliers who were engaged in the building of our nation's capitol. The need existed for assurances that this labor and supplies would be paid for by a relatively new government.

The only justification for a construction lien law is that it serve the construction process. Allow me to take a few minutes to describe the process and the problems of our industry.

When a property owner wants to build a building, whether a simple residence or a skyscraper, he first of all must have a plan which may or may not involve the services of engineers and architects. Before actual construction begins, he engages a general contractor, usually through a process of bidding and discussion involving several competitors.

His chosen contractor takes care of coordinating all sub-contractors and materialmen and sees to compliance with local codes and building regulations.

The property owner expects the project to start on time, continue at a practical pace, and be completed on a certain predetermined date. He expects to pay for the project from his own resources or those of a mortgage holder. He doesn't want to have to pay for anything twice and when the job is completed and paid for, he wants a clear title to his property.

The contractor wants to choose his own subs and material suppliers--generally through competitive bidding--and he wants goods delivered or services performed when called for. He needs credit from subs and materialmen with whom he deals.

He wants them to "carry" him until the project has progressed to a point where the mortgage holder or owner feels justified in advancing him some money. He intends to satisfy his subs and materialmen with payouts for goods and services performed up to that date. He then expects the project to continue until it has again progressed to a stage where more money is forthcoming from the mortgage

lender or property owner. He again wishes his subs and materialmen to "carry" him through the second and subsequent interim periods.

Ideally, when the project is finished, the key is turned over to the property owner, the final payment is made by the mortgage lender or the owner, and the contractor pays off his subs and material suppliers.

During this whole process, the property owner has his land, which is being enriched. The mortgage lender has a security interest in that land, which is usually prior to any security interest of the contractor or his subs and materialmen. The contractor has his contract with the owner, access to the mortgage lender and usually a privileged position for perfecting a construction lien.

What about the materialmen and subs?

They provide the technical know-how and materials that go into the job. They maintain crews, equipment and large inventories of supplies. They are willing and accustomed to bidding in order to get the business. They are expected to perform or deliver on reasonable notice. They are expected to get the job started and invest large sums without payment until the job has reached the stage where the mortgage lender or owner is agreeable to payout.

Subcontractors and materialmen are willing and able to provide interim financing for construction-- but only if they have reasonable security. Only then can they feel free to quote a competitive price.

Good security guarantees competition and gives the property owner assurance that the price is right and interim financing is assured.

Lien rights, of course, are no substitute for good credit management.

It is a fact of life that even the highly successful contractor is in no position to pay, on demand, all the bills charged in his name for all the work and material provided by subs and materialmen on his jobs.

The last three years have proved that even the best of them can get in trouble because of underbidding and high interest rates.

The subs and materialmen must look to security in the project.

With inadequate or elusive security in the project, he must seek some other assurance of payment. One route is to arrange direct payment from the owner or his lender. This is fine for the claimant but usually quite unsatisfactory to the owner or lender and absolutely unpalatable to the general contractor.

In the absence of a good lien law or some suitable option, subs and materialmen are forced to do business with only those with proven reliability and on a basis of unsecured credit.

Subs and materialmen do not want anybody to pay twice. They only want to be paid themselves. The back bone of construction financing in this country is the availability of a lien law which allows the builder, supplier and subcontractor to receive payment in the event of non-payment by the owner or contractor.

As originally submitted, HB 238 was a misguided attempt to deal with a very real problem -- the possibility that a homeowner can end up paying for materials twice in the event that a contractor failed to pay the supplier. Our industry has recognized the potential for this problem occurring and I have attached a newspaper advertisement recently published in Helena to alert consumers to this problem. It is my opinion that the root of the problem is informing the public of the lien process so that they are not harmed by a lack of knowledge.

The amendments offered by the sponsor of this bill, Representative John Vincent, look to the heart of the matter. By requiring contractors to provide either a lien release or information that a lien could be filed for non-payment of supplies, the consumer will have adequate knowledge to make a decision. With these amendments, HB 238 maintains adequate protection for the building material dealers, contractors, sub-contractors and consumers. I urge your favorable consideration of the amendments and, as amended, HB 238.

NB 238
Exhibit T
1/26/83

ATTENTION HAIL DAMAGE HOME OWNERS

PROTECT YOUR RIGHTS

1. **BEWARE** of who you do business with.
2. **CHECK** with local contractors & suppliers before you purchase.
3. **DO NOT** prepay contract work.
4. **MAKE SURE** all materials used for repairs are paid for before you pay the repairman.
5. **REQUIRE** a signed lien waiver for all repairs done before payment.

as a Public Service By:

Kruse Lumber

Saga Lumber

Peterson Lumber Co.

Power Townsend II

United Building Center

HB 238
Exhibit U
1/26/83



Dean Fraley of Bozeman stands by the garage he may have to pay for twice. Its construction resulted in property liens when a contractor, who was paid for the job, failed to pay bills for building supplies.

Homeowner's support protection from liens

By Joan MENGEL,
Chenoble Staff Writer

Bozeman homeowners who were burned by a contractor last year are supporting a legislative bill that provides them with protection from the state lien law.

Several homeowners complained to local legislators last year after contractors took payment for jobs and then failed to pay building supply dealers for materials. Current state law allows the contractor to file a lien against the consumer's property in order to collect the unpaid bills, and the consumer often ends up paying twice for materials.

"I am a very bitter person," Dean Fraley said about his experience with the lien law.

Fraley, a Bozeman resident, said he paid a contractor to build a garage and now has liens of about \$1,200 against his property because the contractor didn't pay his bills.

"It's very unfair, what's law," he said, explaining that the contractor is protected because he can file a lien against the property and the supplier is protected because he can file a lien on the consumer's property.

"The only one not protected is the property owner."

State Rep. John Vincent, D-Bozeman, has introduced a bill to give

consumers more protection. A hearing will be held in Helena at 8 a.m. Wednesday.

Vincent said that the current bill proposed to provide protection for residential suppliers of material suppliers to the state when the consumer had paid the bill. Vincent said, but the substitute bill requires the builder to take one of two actions when he enters into a contract with a person.

One is to provide the consumer with a lien waiver signed by the material supplier which absolves the consumer of any future obligation for unpaid bills. Vincent said, in lieu of that, the contractor could give the consumer a statement written in layman's terms, saying there is no lien waiver and explaining that if the contractor did not pay his bills a lien could be placed against the consumer's property, he said.

Vincent said the bill retains adequate protection for the consumer and meets concerns of material suppliers.

"There's a very legitimate case for more consumer protection in this area," Vincent said.

"It's to me absolutely and totally a fault of his own, is literally forced under the law now to pay twice if the contractor defaults."

Another Bozeman resident, building the bill is paying twice for a furnace and her water heater installed last March. The woman was asked not to be identified, but she paid the installer \$2,500 and later received a letter from the supplier stating the furnace had not been paid for. By that time the supplier had declared bankruptcy, she said, and now she has to pay another \$2,000 to remove the lien on her property.

"I can't stand by and watch it happen to other people," she said. "We don't know about lien waivers. People think that because they have a receipt that says paid in full on a cancelled check, that takes care of it. It doesn't."

Pat Herrings, president of Tri-County Building Supply, said he rarely had to file liens on property until this year. In the case of unpaid bills by one contractor, Herrings has filed about 13 liens totaling \$15,000, he said. In past years liens totaled less than \$5,000, he said.

Herrings opposed any bill that would remove the lien law, and said the public needs to be educated to ask for lien releases before paying the contractor. Herrings said that should not be a problem for reputable contractors, and there should be some responsibility for the homeowner to

hire reputable contractor.

Herrings said if consumers were aware of the lien law, they would ask for lien releases. He also favored a change in the law that makes a manufacturer responsible for the contractor to supply the consumer with a copy of the lien law.

John Miller, a contractor and vice president of the Southern Montana Home Builders Association, said he did not think Vincent's bill would solve the problem. It would be almost impossible for a general contractor to get lien releases suggested by the bill on all materials purchased by subcontractors, he said.

"How in the world am I going to know where everything comes from?" he asked.

Knowledge of the lien law would not necessarily protect the consumer from liens, Miller said. In the current economic situation, there are a lot of people who don't expect to be in financial trouble but are, he said.

"A bad egg reeks on everybody," he said.

Mrs. Robert Montgomery, of Bozeman, said she and her husband face liens of \$1,800 although they have cancelled checks saying their bill was paid in full.

"I hope they pass that law," she said. "There are too many fly-by-nights."



State of California
 Department of Justice
 George Deukmejian
 (PRONOUNCED DUKE-MAY-GIN)
 Attorney General

555 CAPITOL MALL, SUITE 350
 SACRAMENTO 95814
 (916) 445-9555

HB 331
 Exhibit V
 1/26/83

Rec'd - Mon - Dec. 20th, 1982

Mr. Paul Pistoria
 State Representative
 Montana State House of Representatives
 2421 Central Ave.
 Great Falls, Montana 59401

December 17, 1982

USE FOR
~~FILE~~
 H.B. 331

Dear Mr. Pistoria:

This is in response to your recent letter requesting information.

Enclosed is a copy of penal Code section 381 which appears to be the statute you request.

We hope to have been of assistance to you in this matter.

Very truly yours,

George Deukmejian
 Attorney General

[Signature]
 Jon P. Lippsmeyer
 Public Inquiry Unit

JPL:pfs
 Enclosure

components as beads, tiles, tiffany glass, ceramics, clay, or other craft-related components.

(Added by Stats.1979, c. 1165, § 1. Amended by Stats.1980, c. 1011, § 1.)

Former § 380 was repealed by Stats.1978, c. 438, § 1.

§ 381. Toluene and substances with similar toxic qualities; possession and under the influence

(a) Any person who possesses toluene or any substance or material containing toluene, including, but not limited to, glue, cement, dope, paint thinner, paint and any combination of hydrocarbons, either alone or in combination with any substance or material including but not limited to paint, paint thinner, shellac thinner, and solvents, with the intent to breathe, inhale or ingest for the purpose of causing a condition of intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses or for the purpose of, in any manner, changing, distorting or disturbing the audio, visual, or mental processes, or who knowingly and with the intent to do so is under the influence of toluene or any material containing toluene, or any combination of hydrocarbons is guilty of a misdemeanor.

(b) Any person who possesses any substance or material, which the State Department of Health Services has determined by regulations adopted pursuant to the Administrative Procedures Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) has toxic qualities similar to toluene, with the intent to breathe, inhale, or ingest for the purpose of causing a condition of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, satisfaction, stupefaction, or dulling of the senses or for the purpose of, in any manner, changing, distorting or disturbing the audio, visual, or mental processes, or who is under the influence of such substance or material is guilty of a misdemeanor.

(Added by Stats.1980, c. 1011, § 3.)

Former § 381 was repealed by Stats.1980, c. 1011, § 2.

Cross References

Misdemeanor, Defined, see § 17. Punishment, see §§ 19, 19a.

§ 381a. Dairy products; use of inaccurate or false testing devices; punishment

Any person, or persons, whether as principals, agents, managers, or otherwise, who buy or sell dairy

products, or deal in milk, cream or butter, and who buy or sell the same upon the basis of their richness or weight or the percentage of cream, or butter-fat contained therein, who use any apparatus, test bottle or other appliance, or who use the "Babcock test" or machine of like character for testing such dairy products, cream or butter, which is not accurate and correct, or which gives wrong or false percentages, or which is calculated in any way to defraud or injure the person with whom he deals, is guilty of a misdemeanor, and upon conviction shall be fined not more than five hundred dollars (\$500.00) or imprisoned in the county jail not more than six (6) months (Added by Stats.1901, c. 148, § 1.)

Cross References

Babcock test, see Food and Agricultural Code § 34261 et seq. Definitions, Butter, see Food and Agricultural Code § 37161. Cream, see Food and Agricultural Code § 32504. Milk, see Food and Agricultural Code § 32511. Milk and dairy products, misrepresentation in sale of milk, see Food and Agricultural Code §§ 32902, 34201, 35788, 36061 et seq. Prohibited sale of ungraded milk where inspection service established, see Food and Agricultural Code § 35755. Testing of dairy products, see Food and Agricultural Code §§ 34228 et seq., 62551 et seq.

§ 381b. Repealed by Stats.1939, c. 514, § 1

See, now, Food & Agric.C. § 34321 et seq.

§ 382. Adulteration of food, beverages, drugs, medicines, or liquors; sale of adulterated items; offense; defense by dealer

Every person who adulterates or dilutes any article of food, drink, drug, medicine, spirituous or malt liquor, or wine, or any article useful in compounding them, with the fraudulent intent to offer the same, or cause or permit it to be offered for sale as unadulterated or undiluted; and every person who fraudulently sells, or keeps or offers for sale the same, as unadulterated or undiluted, or who, in response to an inquiry for any article of food, drink, drug, medicine, spirituous or malt liquor, or wine, sells or offers for sale, a different article, or an article of a different character or manufacture, without first informing such purchaser of such difference, is guilty of a misdemeanor; provided, that no retail dealer shall be convicted under the provisions of this section if he shall prove a written guaranty of purity obtained from the person from whom he purchased such adulterated or diluted goods.

(Enacted 1872. Amended by Stats.1903, c. 254, § 1)

CALIFORNIA PAIN SNIFING LAW



HB 331
Exhibit W
1/26/83

Proposed Amendment to HB 331

1. Page 1.

Following: "(1)" on line 9

Strike: the remainder of lines 9 through 17 in their entirety.

Insert: "Any person who possesses toluene or any substance or material containing toluene, including but not limited to, glue, cement, dope, paint thinner, paint, and any combination of hydrocarbons, either alone or in combination with any substance or material, including but not limited to, paint, paint thinner, shellac thinner, and solvents, with the intent to breathe, inhale or ingest for the purpose of causing a condition of intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses or for the purpose of, in any manner, changing, distorting or disturbing the audio, visual, or mental processes, or who knowingly and with the intent to do so is under the influence of toluene or any material containing toluene, or any combination of hydrocarbons, is guilty of a misdemeanor.

(2) Any person who possesses any substance or material which has toxic qualities similar to toluene, with the intent to breath, inhale, or ingest for the purpose of causing a condition of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, satisfaction, stupefaction, or dulling of the senses, or for the purpose of, in any manner, changing, distorting or disturbing the audio, visual, or mental processes, or who is under the influence of such substance or material, is guilty of a misdemeanor."

Renumber: subsequent subsection.

2. Line 18.

Following: "convicted"

Strike: "of criminal possession of a toxic substance"

Insert: "under this section"

3. Line 21.

Following: "exceed"

Strike: "\$1,000"

Insert: "\$500"

GREAT FALLS CLINIC

P. O. BOX 5012
1220 CENTRAL AVENUE
GREAT FALLS, MONTANA 59403
PHONE (406) 454-2171

FOR H.B. 331

HB 331
Exhibit X
1/26/83

January 25, 1983

Honorable Gladys Vance
Justice of the Peace
Great Falls, MT 59401

Dear Judge Vance:

Pat LaRocque asked me to dictate a letter in regards to paint sniffing and pregnancy. This has been a problem in this community among a select group of parents.

We have seen at least two children with significant birth anomalies presumably related to the parents chemical dependence. Unfortunately, the chemical abuse is often times a mixture of chemicals as well as poor dietary intake.

Specifically being able to diagnose a physical finding as the result of a particular chemical is not possible. I have spoken with authorities in Atlanta as well as the Rocky Mountain Poison Center and they are unaware of specific data that has ever been gleaned in regards to the related defects with paint sniffing.

I am strongly in support of a paint sniffing statute in this community and it receives my full support.

If I can be of further assistance or help, please do not hesitate to write or call.

Sincerely yours,

Jeffrey P. Hinz, M.D.

JPH/kc

INTERNAL MEDICINE

F. J. ALLAIRE, M.D.
D. E. ANDERSON, M.D.
R. D. BLEVINS, M.D.
PULMONARY DISEASE
G. A. BUFFINGTON, M.D.
NEPHROLOGY
S. J. EFFERTZ, M.D.
RHEUMATOLOGY
J. D. EIDSON, M.D.
K. A. GUTER, M.D.
ONCOLOGY
W. H. LABUNETZ, M.D.
NEUROLOGY—EEG
T. J. LENZ, M.D.
W. N. MILLER, M.D.
GASTROENTEROLOGY
W. N. PERSON, M.D.
T. W. ROSENBAUM, M.D.
NEPHROLOGY
J. D. WATSON, M.D.
CARDIOLOGY

OBSTETRICS AND GYNECOLOGY

R. E. ASMUSSEN, M.D.
P. L. BURLEIGH, M.D.
R. L. MCCLURE, M.D.
G. K. PHILLIPS, M.D.

PEDIATRICS

J. W. BRINKLEY, M.D.
J. A. CURTIS, M.D.
J. M. EICHNER, M.D.
J. R. HALSETH, M.D.
T. E. HARPER, M.D.
J. P. HINZ, M.D.

PSYCHIATRY

D. E. ENGSTROM, M.D.

PSYCHOLOGY

E. E. SHUBAT, PH. D.

SURGERY

W. P. HORST, M.D.
UROLOGY

R. E. LAURITZEN, M.D.
GENERAL AND VASCULAR

J. E. MUNGAS, M.D.
VASCULAR SURGERY

L. M. TAYLOR, M.D.
GENERAL AND THORACIC

W. C. VASHAW, M.D.
GENERAL AND VASCULAR

ADMINISTRATION

W. D. TAYLOR
M. D. MISSIMER



HB 331
1/17/81 . Exhibit Y
1/26/83

THE NEWBERRY LIBRARY CENTER FOR THE HISTORY OF THE AMERICAN INDIAN

To Whom it May Concern:

On a recent trip to Montana, in January 1981, I confronted an issue, complicated in nature, paint sniffing. I was particularly disturbed to discover that Montana law has no provisions to deal with this growing social problem, and no grounds to reprimand persons to detox programs for effective treatment and rehabilitation.

Let me explain my professional reactions to the problem as I encountered paint sniffing in Great Falls several weeks ago, and my recommendations from a cultural and social perspective on the underlying influences on the immediate problem.

I am a cultural anthropologist who has spent much time in Montana, getting to know the people on the Ft. Belknap and Ft. Peck reservations. While visiting an older couple on one of these reservations, I participated in a trip to Great Falls to attempt a "rescue" of one of their daughters currently caught up in the habit of paint sniffing. She was living, as of two weeks ago, in a house with a group of people where paint sniffing was apparently an on-going accepted behavior. Wasting away due to a lack of food, all the financial resources of this group are directed to getting high on spray paint. The situation is particularly pathetic, because most of this group are young Indians. Certainly the problem abounds among non-Indian as well, but the situation in Great Falls appears at this time to involve primarily Indian people. Some of these individuals have had bouts alcoholism previously, and the entanglement in paint sniffing is the surface consequence of a larger problem.

Many individuals, Indian and non-Indian, have trouble achieving self satisfaction and fulfillment. This situation is particularly acute among many younger Indian people I have met in Montana. Many have abandoned education as a false promise for a wide range of reasons, from teenage pregnancy to no viable career opportunities ever really being offered to them. The incongruence many feel is wanting the good times, reflected in the media and press, but seeing no way to participate economically. Therefore, it becomes an easy way around the situation to get high, and to stay high to cover up their frustrations and their non-membership in the large American way of life. Many take the little resources they have, and get high, even to the danger of self destruction, rather than face the overwhelming frustrations of being outsiders in their own land. Many just give up on life. I am just touching on the background of many who are caught up in this habit, which is so physically destructive. I certainly can not speak for these people, rather the complexity of circumstances individual and cultural that come into interplay, in my opinion, must be understood if this malaise is to be eliminated.

I would urge you to provide a legal framework that discourages the destructive behaviors of paint sniffing. Secondly, I recommend sending persons caught up in this habit to effective detox programs. Such treatment programs may need to be coordinated with the alcohol and drug abuse programs on their home reservations. Certainly, intensive counselling is in order, and therapies may need to be discovered that reach the basic problems of self satisfaction and individual fulfillment. The possibility also must be recognized that many habitual paint sniffers may already have suffered brain damage to an extent to require indefinite institutionalization. Rehabilitation for this social problem is not easy or simple, but the problem must be recognized first.

Sincerely yours,


David R. Miller

INTER-OFFICE MEMORANDUM

FILE:.....

CITY OF GREAT FALLS, MONTANA

TO: Captain Dull

DATE 24 January 1983

FROM: Midge Warrington

REPLY REQUESTED ON OR BEFORE:.....

SUBJECT: Arrests resulting from "Paint/Glue Sniffing"

The following list compiles those incidents during 1982 where the specific use of paint or glue being sniffed resulted in contact by officers of this department and subsequent arrests. The only category checked in our files was "Disorderly Conduct", the major category where arrests for paint sniffing are recorded. There are other categories where the abuse of paint or glue could be found, including "Complaint/General; Citizen Assist; Disturbances; Assaults". However, checking physically each report in the above categories would require a great amount of time, and would in all likelihood be inaccurate in total count and unproductive, as in most cases the contribution to the offense by the abuse of paint or glue would probably not be mentioned, and in many cases, the CR card would be simply circled "No Report Required" if no arrest was made and the individual(s) were simply sent on their way.

As indicated below, the department in 1982 had 37 specific instances of abuse of paint or glue which resulted in 59 arrests.

CR#	Date	Result	CR#	Date	Result
03209	2-13-82	1 arrest; 1 to hospital	19155	8-12-82	2 arrests
03903	2-22-82	1 arrest	22845	9-23-82	3 arrests
04289	2-27-82	2 arrests	23364	9-30-82	2 arrests
04633	3-4-82	2 arrests	23459	10-1-82	1 arrest
05686	3-18-82	1 arrest	23855	10-6-82	2 arrests
05991	3-21-82	3 arrests	24924	10-19-82	2 arrests
06793	4-1-82	2 arrests	25491	10-26-82	1 arrest
08381	4-20-82	1 arrest	26197	11-5-82	2 arrests
08614	4-23-82	2 arrests	26692	11-16-82	1 arrest
09215	4-30-82	2 arrests	27048	11-16-82	1 arrest
09896	5-8-82	3 arrests	27184	11-18-82	1 arrest
09906	5-8-82	1 arrest	27989	11-29-82	2 arrests
10006	5-9-82	1 arrest	28855	12-10-82	1 arrest
10713	5-17-82	3 arrest; 1 to hospital	29128	12-14-82	1 arrest
10896	5-20-82	1 arrest-later to hospital	30245	12-29-82	2 arrests
11061	5-22-82	1 arrest			
11924	6-1-82	1 arrest			
13451	6-17-82	1 arrest			
14534	6-27-82	2 arrests			
15010	7-1-82	1 arrest			
15293	7-4-82	2 arrests			
16337	7-15-82	1 arrest			

VISITOR'S REGISTER

HOUSE _____ JUDICIARY _____ COMMITTEE _____

BILL HOUSE BILL 234

DATE January 26, 1983

SPONSOR Rep. Yardley

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
<i>Bob Mattson</i>	<i>814 W. Wash, Lewiston</i>	<i>School Dist # 1</i>	X	
<i>Karla Gray</i>		<i>MTLA</i>		X
<i>Tammy Hart</i>	<i>Bozeman MT</i>	<i>School District 7</i>	X	
<i>Chap Erdman</i>	<i>Helena MT</i>	<i>MSBA</i>	X	
<i>Alice Tully</i>	<i>Missoula, MT</i>	<i>MSBA</i>	X	
<i>Jay Phillips</i>	<i>Missoula, MT</i>	<i>Hellgate Elementary #4</i>	X	
<i>Sterlin Nielsen</i>	<i>Vaughn, MT</i>	<i>School Dist # 74</i>	X	
<i>John Burkholz</i>	<i>Vaughn, MT</i>	<i>School Dist # 74</i>	X	
<i>Carlene Maddek</i>	<i>1245 PARK GARDEN RD</i>	<i>SCHOOL TRUSTEE MSBA</i>	X	
<i>Claudia Steen</i>	<i>Ht. Falls, MT</i>	<i>Trustee</i>	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE _____ JUDICIARY _____ COMMITTEE _____

BILL House Bill 238

DATE January 26, 1983

SPONSOR Rep. Vincent

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
John Grant	Helena	Kermit Aldrease Inc.		X
Tom Weston	Helena	Sharbans Construction		X
Mike Storsdahl	Butte	UBC		X
Mike Sather	Helena	UBC		X
Jerry Nelson	Valley	DeVos Builders		X
John Holloway	Helena	MT Home Builders		X
Blake Woodard	"	MT HARDWARE & Implement MT Building Materials		X
Tom Simkins	Simkin Helena Bozeman	Simkin Helena Lumber Co		X
Roger Tippy	Helena	self	X	
Marilyn Jensen	Bozeman	Self	X	
Quen Robinson	Great Falls	Proctor Robinson Lumber Co.		X
Fred Robinson	Helena	Peterson Lbr. Co.		X
Maryanne Hamer	Helena	LWV		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 250

DATE January 26, 1983

SPONSOR Rep. Vincent

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Mrs. Mary E. Doubek	7145 h. Mont Ave Bozeman, Mt.	myself, family, friends MADD	✓	
Boni Fisher	1815 Soudougher	MADD	✓	
Glenn M. Jones	735 40 St SE Great Falls	Self & JIP	✓	
Myra E. Pichel	900 Grant Helena	MMA		✓
Walter P. Miller	1733 WINNE HELENA, MT	MMA		✓
William Clark	316 N. Park, Helena	Mont. Chiefs of Police Assn	✓	
Steve King	5422 Myrtle St Helena Helena	Shelton	✓	
John Thompson	925 5 TH AVE	Self	✓	
Carolyn D. Jones	7993 Hwy 2 W Helena	Self	✓	
Betty Wing	329 So 2nd W, MSLA	MSLA co task force for the prevention of Drunk Drive	✓	

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