

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
February 19, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. by Chairman Kerry Keyser, in Room 437 of the Capitol. All members were present. Jim Lear, Legislative Council, was present.

HOUSE BILL 795 REP. COZZENS, chief sponsor, stated the bill lays out the stages of involuntary commitment of alcoholism. The purpose is to revise the law pertaining to the involuntary commitment of alcoholics allowing the certifying physician's testimony to be submitted by affidavit and allowing the taking of his deposition; and amending section 53-24-302, MCA. Page 2 and 3 are designed to allow the option for an affidavit or deposition.

DICK BAUMBERGER, Alcohol Programs of Montana, feels that the process is quite cumbersome and this bill would solve those problems. Some judges don't understand what the present law does. Usually there is not an administrator in the rural area.

CURT CHISHOLM, Department of Institutions, was a proponent but felt the bill had problems. If an alcohol counselor or a doctor signs an affidavit it will create problems in that the accused should be able to cross examine. The person should have the right to subpoena and have a licensed doctor of his choosing at the hearing. A problem in smaller rural areas is that alcoholics have difficulty in obtaining a doctor there. EXHIBIT 1 was given.

There were no further proponents.

There were no opponents.

In closing, REP. COZZENS stated the wording on page 2 and 3 does not preclude the doctor from the hearing. The person may have the doctor of his choice testify, or it would allow the doctor to present an affidavit. There is a concern this might open the door to make alcohol counseling centers mandatory. This is not the intent of the bill.

REP. HANNAH asked about deposition. NICK ROTERING, Department of Institutions, replied a deposition cannot be arranged for in less than 3 weeks. Any objection an attorney has will set it back farther. The time delay does not help the alcoholic.

REP. YARDLEY asked about involuntary commitment. CHISHOLM replied a professional health person's opinion must be given in court.

REP. CURTISS asked if this bill was at the request of the Department of Institutions. The sponsor said it was not but alcohol treatment centers would like it passed.

REP. EUDAILY asked who certifies the alcohol counselors. The Department of Institutions will in the budget year of 81-82.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 8:45 a.m.

HOUSE BILL 12 REP. KEEDY moved do pass. The problem with the existing statute is additional sentencing does not run consecutively. REP. KEEDY offered an amendment to require judges to make the sentences run consecutively. The amendment passed unanimously.

REP. EUDAILY felt judges should distinguish between dangerous and nondangerous crimes. REP. KEEDY moved to reconsider the amendment. All were in favor of the motion. After a brief discussion the amendment passed with SHELDEN, HUENNEKENS, YARDLEY, EUDAILY and ABRAMS voting no.

REP. KEEDY moved to amend less than five years have elapsed between the commitment of the present offense and either confinement or the language in 501. After a brief discussion REP. KEEDY changed his amendment to read "and either the previous felony conviction or the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction". The amendment passed.

REP. HANNAH moved do pass as amended. A roll call vote resulted. Those voting yes were: KEYSER, SEIFERT, BENNETT, CONN, CURTISS, HANNAH, IVERSON, MATSKO, MCLANE, and KEEDY. Those voting no were: EUDAILY, DAILY, ABRAMS, HUENNEKENS, SHELDEN, TEAGUE and YARDLEY. The bill passed as amended 10 to 7.

HOUSE BILL 20 REP. MCLANE moved do pass.

REP. IVERSON moved following "CONSECUTIVELY" strike "WITH" and insert "TO" in the title and on page 2, line 20. The motion passed unanimously.

REP. MATSKO moved do pass as amended. The motion carried with REP. YARDLEY voting no.

HOUSE BILL 99 REP. DAILY moved do pass.

REP. DAILY moved to amend the bill on page 3, line 6 striking "or execution" and on line 7, and to strike "of imprisonment" on line 7 in the title and throughout the bill. The amendment carried.

REP. DAILY moved do pass as amended. The bill passed with SHELDEN, YARDLEY and HUENNEKENS voting no.

HOUSE BILL 284 REP. BROWN moved do pass.

REP. BROWN moved to adopt the amendments as given to the committee earlier. REP. BROWN moved to strike on the amendments (2)(b); and to strike chapter 23, part 2 on the last two lines of the bill where it appears the second time. The amendment carried.

REP. BROWN moved do pass as amended. The motion carried.

HOUSE BILL 361 REP. HUENNEKENS moved do not pass.

REP. CURTISS made a substitute motion to table the bill. The substitute motion carried.

HOUSE BILL 364 REP. BROWN moved do not pass.

REP. CONN made a substitute motion of do pass. REP. CONN offered the amendments as in EXHIBIT 2. The amendment passed with IVERSON, BROWN, DAILY, BENNETT, TEAGUE and HUENNEKENS voting no.

REP. HANNAH moved to strike "not less than" and to strike "or more than one day" and to insert "in the county jail" on the amendment. The motion carried.

REP. HANNAH moved do pass as amended. The bill passed.

HOUSE BILL 595 REP. HUENNEKENS moved do not pass. He stated we cannot ignore the fact that we may lose federal funds.

REP. IVERSON made a substitute motion of do pass. REP. MCLANE seconded the motion. REP. IVERSON stated people don't function well at 55 mph.

REP. CONN stated the legislature should have respect for the federal laws. If the Reagan administration sees fit then we should abide by their rulings.

REP. HANNAH moved on page 2, line 13 to insert "in state" and strike the rest of the line.

REP. EUDAILY made a substitute motion to adopt the amendments as proposed by REP. SIVERTSEN in his testimony. The substitute motion carried.

REP. CONN moved a conditional enactment to make the bill not effective until federal congress returns to the states the authority to establish speed limits without regard to federal funding of highways, and to renumber subsequent sections. REP. BENNETT was opposed to the amendment because it takes away the intent of the bill.

A roll call vote resulted on the amendment. Those voting yes were: KEYSER, CONN, EUDAILY, ANDERSON, HUENNEKENS, SHELDEN, KEEDY and YARDLEY. Those voting no were: SEIFERT, BENNETT, CURTISS, HANNAH, IVERSON, MATSKO, MCLANE, TEAGUE and BROWN. The vote was 8 yes and 9 no.

REP. IVERSON moved do pass as amended. Those voting yes were: SEIFERT, BENNETT, CURTISS, HANNAH, IVERSON, MATSKO, MCLANE, TEAGUE and BROWN. Those voting no were: KEYSER, CONN, EUDAILY, ANDERSON, HUENNEKENS, SHELDEN, KEEDY and YARDLEY. The bill passed as amended 9 to 8.

HOUSE BILL 644 REP. BROWN moved do pass.

REP. BROWN moved page 3, line 7 strike section 2 and renumber the subsequent sections and to amend the title. The amendment passed.

REP. BROWN moved page 4, line 14 striking \$500 and inserting \$200. The amendment passed with YARDLEY, ANDERSON, KEYSER, SHELDEN, and EUDAILY voting no.

REP. BROWN moved do pass as amended.

After some discussion the bill was passed for the day.

HOUSE BILL 676 REP. DAILY moved do not pass.

A roll call vote resulted. Those voting yes were: KEYSER, SEIFERT, CONN, EUDAILY, IVERSON, ANDERSON, DAILY, SHELDEN, KEEDY, TEAGUE, and BROWN. Those voting no were: BENNETT, CURTISS, HANNAH, MCLANE, HUENNEKENS, and YARDLEY. The motion carried 11 to 6.

The meeting adjourned at 11:30 a.m.


KERRY KEYSER, CHAIRMAN

SUGGESTED AMENDMENTS HB 795

1. Page 1, line 25 - licensed physician or a Certified alcoholism counselor, who has examined the person within 2 days.
2. Page 2, line 5 - physicians, or certified alcoholism counselors findings in support of the allegations of the
3. Pages 2 & 3, lines 24-2 - physician may be presented by a signed affidavit. ~~The-person-whose-commitment-is-sought-may-depose the-certifying-physician-and~~ However, the person shall have the right to subpoena the certifying physician and he shall have the right to have a licensed physician of his own choosing examine him and
4. Page 3, line 13 - licensed physician; or by a Certified alcoholism counselor and there is sufficient evidence to

Substitute Bill for HB 364

1. Title, lines 4 through 11.

Following: "AN ACT TO PROVIDE"

Strike: lines 4 through 11 in their entirety

Insert: "MANDATORY SENTENCES FOR DRIVING OR BEING IN CONTROL OF A MOTOR VEHICLE WITHIN THIS STATE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AMENDING SECTION 61-8-714, MCA."

2. Pages 1 through 9.

Strike: all of the bill following the enacting clause

Insert: "Section 1. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving while intoxicated. (1) Every A person who is convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 1 day or more than 1 day, and 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 a fine of not less than \$300 or more than \$500, to which may be added, in the discretion of the court, and by imprisonment for a term not less than 7 days or more than 30 days. 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.

(3) On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than \$500 or more than \$1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) Except as otherwise for nonsuspendable jail sentences provided in this section, the court may, in its discretion, suspend the execution of any sentence imposed under subsection (1) this section on the condition that the defendant successfully complete a course in a driver improvement school approved by the court or an alcohol treatment program approved by the department of institutions. Each school or institution providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been accepted by the school or treatment program. If the defendant fails to attend the school or the treatment program, the school or institution shall notify the court of the failure.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

ROLL 795

Date 2/19/81

SPONSOR COZZENS

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.