MINUTES OF THE JUDICIARY COMMITTEE House
March 11, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown at 8:03 a.m. in room 224A of the capitol building, Helena, Montana. All members were present as was Brenda Desmond, Staff Attorney for the Legislative Council.

SENATE BILL 313

This is a bill which allows an arresting officer to immediately seize the driver's license of any person refusing to submit to a chemical test; providing for suspension or revocation of the license by the Motor Vehicle Division, increasing the period of suspension; and reducing the time for notice of an appeal of suspension to the county attorney.

SENATOR HALLIGAN, District 48, Missoula, stated that this bill strengthens the implied consent statute to allow an arresting officer to seize the driver's license of any individual operating a motor vehicle who refuses to submit to a chemical test and strengthens the penalties involved.

ALBERT GOKE, Administrator of the Highway Traffic Safety Division of the Department of Justice, stated that they support this bill and he has several amendments he would like to propose. See EXHIBIT A.

SARAH POWER, Assistant Attorney General, in the Department of Justice, said that she wanted to give her support to this bill and urged that the committee pass it. She informed the committee that she did some of the drafting on the bill and would be happy to answer any questions.

FRANCES ALVES, representing the City-County Health Department, Missoula, Montana, stated that she represents a task force that is concerned about drunk driving and they feel that they need the protection and the help that is given by this bill and they also support the amendments.

MIKE TOOLEY, Chief of Driver Services of the Department of Justice, stated that there was concern that was mentioned in this committee about getting to the drunk before the occasion happens and the main thing involved in the federal money is related to training, publicity and prevention.

JIM NUGENT, City Attorney for the City of Missoula, offered a statement in support of this bill. See EXHIBIT B.

BETTY WING, Deputy County Attorney for Missoula County, said she would add her support for this bill and for the amendments. She indicated that they would like to see the federal funding, but they also feel that the changes are important in themselves. She contended that if they had a six-month's suspension when they refused and a six-month's suspension when they were convicted, then there will be more of a chance that they will take the test. She indicated that the test is very important for them because it is hard scientific evidence that they can use before a judge and jury.

GORDON POWELL, representing Mothers Against Drunk Driving, indicated that they would like to see this bill pass as it gives an immediate answer to drunk driving at the scene and they feel that driving is a privilege.

There were no further proponents and no opponents.

SENATOR HALLIGAN advised that he did not have any problems with the amendments; they originally had in there that once the seizure took place, the driver's license would be suspended but Senator Turnage did not think that that was appropriate and he would allow for the seizure but not the immediate suspension.

REPRESENTATIVE EUDAILY indicated that he did not remember the details of all the bills that we have had in this committee and he wondered how the provisions in this bill fit in with the other ones. He thought that they had deleted the temporary license in one of them and narrowed the language which related to driving on the public highways. MR. GOKE answered that there are a number of bills; they have three bills that include a definition of "ways" and SB 313 should agree with these; HB 808 differs from SB 313 basically in the provision relating to seizure instead of suspension; it also includes penalties of six months while SB 313 has penalties of 90 days and six months. He stated that it is their intention to propose an amendment to HB 808 in the Senate and to his knowledge, they are not building in an internal conflict.

REPRESENTATIVE HANNAH thought that one of the main ingredients in thse bills is the definition of the language "ways of the state open to the public"; and he wondered if when these bills are passed out of this committee and become law, will this language be incorporated into all of them. MS. POWER responded that any action taken on SB 313 or any other of these bills will be reconciled in a conference committee. She advised that this bill does not address or appear to change the language "upon the public highways", but SB 250 does address that particular issue and requires a change in the language.

REPRESENTATIVE HANNAH commented that he missed the testimony on the federal money and wondered what was said. SENATOR HALLIGAN responded that there is around $300,000.00 available for training and equipment. MR. GOKE clarified by saying that there would be approximately $300,000.00 a year; the fact that the federal government would increase that funding, it obviously would grow; and it contains a four-year provision wherein they would stand to receive at least $900,000.00.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 260

This bill extends the laws relating to the operation of a motor vehicle while under the influence of alcohol to roads and parking areas adapted for public travel and used by the public with the consent of the owner.

SENATOR HALLIGAN, District 48, Missoula, stated that the language on the bottom of page 1 and continuing on the top of page 2 defines "ways of this state open to the public" and is the only language that will make it through the Senate. He commented that there was concern that if you were sitting in your Winnebago, which is parked in your driveway, drinking a beer,

and you could get picked up for drunk driving if the engine was on. He noted that this particular language has been upheld by the Washington Supreme Court and does address many of the major issues. He advised that at the present time, if you are drunk and go into the K-mart parking lot, the law enforcement people cannot do anything to arrest you if you are under the influence of alcohol; if you are on drugs, they can; and on alcohol, they cannot. He emphasized that this will take care of that problem.

BETTY WING, Deputy County Attorney for Missoula County and a member of the task force on drunk driving, said that she had a proposed amendment and she hoped that Senator Halligan is wrong in his statement that that is the only language that will get through the Senate. See Exhibit C. She stated that they have problems in Missoula and everywhere else with people driving on public parks, on the campus, and other public lands that are not ways open to the public; they are not streets and they are not suppose to be driving across lawns, through the grass and through the campus, so they hope this amendment will open it a little more so they can arrest these people for drunk driving. She also advised that when they go to court they have to prove everything that is in this language and the language on the end says "with the express or implied consent of the owner"; she did not think that this adds anything, and it is just one more thing they are going to have to prove. She indicated that they would have to bring in the manager of K-mart to show that they do have express or implied consent and this would just be another hassle for them.

JIM NUGENT, Missoula City Attorney, offered a statement in support of this bill. See EXHIBIT D.

There were no further proponents and no opponents.

SENATOR HALLIGAN said that when he was going to college, he thought driving on the college campus was a way open to the public, and he would give Ms. Wing's amendment a shot - he thought it may be an amendment that may be acceptable to the Senate.

REPRESENTATIVE ADDY asked if there was no other violation that a person could be charged with other than drunk driving if he were driving his vehicle on a public land. MR. NUGENT replied that if he were in a park and the park was in the city limits, there is a law that says they cannot operate a motor vehicle in a park. REPRESENTATIVE SPAETH commented that it could be criminal mischief or reckless driving. MR. NUGENT responded that a drunk driver is not necessarily a reckless driver - some of them drive quite slowly and you can't look at that as an alternative to dui.

REPRESENTATIVE ADDY said that it would seem to him that if they were driving quite slowly in a place that was not a road that had people in it that that would be considered reckless.

REPRESENTATIVE DAILY asked if Missoula does any thing as far as the campus is concerned to try and stop these kind of things. MR. NUGENT responded they have an outreach program where they try to get the students involved in trying to help other students with alcohol problems. He indicated that they patrol the streets, but when he is talking about the campus, he is not talking about the roads in the campus, but he is talking about the lawns themselves. He said that he has been prosecuting for eight years now and he could tell a lot of horror stories; and until 1979, they were able to prosecute those people anywhere and a lot of them involved serious accidents.

REPRESENTATIVE DAILY asked, since this is such an obvious problem did he present testimony in support of raising the drinking age from 19 to 21-years-of-age. MR. NUGENT replied that he did not come over on that bill but he personally supports that.

REPRESENTATIVE JENSEN asked if he would support raising the drinking age to higher than 21 - would he go for 35 or 40 years of age. MR. NUGENT replied that a lot of people in the Missoula area say that they would like to get it above the college age level. He stated that statistically it shows that it does reduce the number of deaths of young people if you raise it.

CHAIRMAN BROWN said that he has problems understanding the language "with the express or implied consent of the owner" as this could get in the way in connection with parking lots, the lot in front of the bar, or the lot at the shopping center and he wondered if he thought that any of this would be a major problem with this language left as it is. MS. WING replied that it is hard to look at the future, but it appears to be one more conflict that can come up in a trial and she felt that clearly, in any parking lot or driveway, does have the express or implied consent of the owner but it gets technical in legal terms to prove what implied consent is.

REPRESENTATIVE EUDAILY asked with the amendments where it is being opened to all public lands of the state, what about state school lands that are way out in the boon docks, state forestry lands, land way removed from the general population, would these people still be picked up out there. MS. WING replied that it would cover all state lands.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 386

SENATOR HALLIGAN, District 48, Missoula, stated that this bill provides that a direct communication to a judge by a litigant or his attorney that is intended to influence the outcome of any matter pending before the judge constitutes a contempt of court. He felt this was a formal way of saying that you really should not interfere with the judicial process because there is a tremendous need to preserve the dignity of the court when matters are pending before the court. He indicated that there is a wide gap in the statute that allows someone to come up to a judge that is involved in a proceeding before the court and discuss the matter with them and attempt to interfere or influence the judge's decision. He suggested that the bill be amended on page 3, line 14, by changing the word "interested" to the word, "involved".

JIM WHEELIS, District Judge of the Fourth Judicial District, stated that this bill does not restrict or in any way affect the ordinary things that an attorney or litigant can do if it is not an adversary position. He asserted that this bill is directed at attempts during litigation to affect the outcome by putting pressure on, by calling on the phone and all the various things that people can do to try to force them to act somewhat unethically. He said the most problems are with the litigants, particularly in domestic cases.

ED McLAIN from the Missoula County Attorney's Office, stated that he supported this bill; it appears that they are now in the age of much in forma pauperis litigation where they have people on their own behalf in court without any of the attendant ethics that are required of an attorney. He contended that they need something to bring these people who have their right to their day in court to some realm of responsibility.

There were no further proponents and no opponents.

SENATOR HALLIGAN reminded the committee that this does not affect any communications prior to trial or any communication that would affect your freedom of speech, but does address the problem of fairness during the trial.

REPRESENTATIVE HANNAH asked if his brother was involved in a trial and rather than his brother harassing the judge, he did and he wondered if this would fall into these provisions at all. JUDGE WHEELIS responded that he thought not - that personally as a judge he would like it to apply, but he did not think so. He said that he does get calls like that from a relative, but it is very different from the person who is actually involved as a party.

REPRESENTATIVE DAILY said that if someone calls you and you just say you can't talk to them, why do we need this bill. JUDGE WHEELIS responded that it is the fourth call, the fifth call, the letters, the stuff being tacked on your door at night, abusive remarks, people sitting in front of your door, people parking their cars and staying in them for several days in front of your house - he has had all that

happen; most of it involving one or two cases, but when it does happen, there is no real clear way to counteract it. He commented that most people are just satisfied with one call, but some litigants call at 3:00 a.m. and they really don't try to influence pending litigation, they just go pftttt and hang up. He alleged that this bill is not going to affect that kind of thing since they are hard to identify. He continued that there are 4 to 5 per cent that do not give up with one call; he does not like to find people in contempt; it is not something you use very often; but when you need it, you appreciate it.

REPRESENTATIVE DAILY said that judges have a lot of power and they could really abuse this just because they might get a call from someone. JUDGE WHEELIS responded that he agreed with that, but he did not feel that most of the judges were going to abuse this, though it may be abused now and then; but he did not feel that it would warrant not having this bill in effect.

REPRESENTATIVE BERGENE asked if there was money involved in any of these calls, i. e. offers. JUDGE WHEELIS replied no, it is just simply abuse.

CHAIRMAN BROWN asked if they have ways to deal with any attorneys who try to pull this stuff. MR. MCLAIN replied that the attorney can be cautioned about the case; he is smart enough to know that he best remove himself as this would pretty much cut him off from all litigation before that judge; if he does persist or goes toward harassment, he could go before the Commission on Practice. He explained that in relation to the lay person, it is a one-time shot and he does not have the hesitancy to use profanity and keep coming back and keep coming back. He said that with the lay person it is often a case of him going over to the judge's residence, nailing posters on his porch, and parking cars in front of his house. He emphasized that he has never observed any attorneys doing that. He contended that under the present law, that is not a direct contempt, because it is not being done in the judge's chambers.

CHAIRMAN BROWN said that his point is that this bill is mainly after the litigant and not the attorney. MR. McLAIN replied that that is correct.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 65

SENATOR HALLIGAN, District 48, Missoula, said that this bill deals with correcting problems with sentencing statutes that limit the amount of time a deferred sentence may be imposed when restitution would be an appropriate sentence. He explained that in the present law, restitution provisions are deficient when the amount that is owing by the person who violated the law is so large that they can't pay it back in the three years, which is the time the present law allows. He stated that this bill simply extends the time from one year to two years for a misdemeanor and from three years up to six years for a felony.

KAREN TOWNSEND, representing the county attorney in Missoula, testified that a woman in Missoula pleaded guilty to two cases of welfare fraud; the judge gave her a three-year deferred imposition of sentence to run consecutively on the condition that she pay the money back. She stated that she never paid a dime; they went last summer to attempt to revoke her probation; and because of the period of time including good time, the court decided that, first of all, they could not run the sentence consecutively; and, therefore, they were unable to do anything about this particular case. She alleged that this woman has essentially escaped without any responsibility of paying the state back. She informed the committee that they currently have a woman in Missoula, who took $15,000.00 from the McDonald chain, and another case where an individual owes the insurance company $79,000.00. She declared that all these people are trying to convince the court that they are entitled to deferred sentences; but the court's position is how are they ever going to make this kind of restitution in less than three years. She urged the committee's consideration in passage of this bill.

There were no further proponents and no opponents.

SENATOR HALLIGAN explained that the judges cannot impose restitution on individuals who have no ability to pay; the judge has to take a real close look at the individual's ability to pay back any amount and if six years is appropriate, that is what they will get - or four years, or two years, whatever is appropriate. He stated that there is no mandatory sentencing involved here.

REPRESENTATIVE DAILY asked if the lady who had committed welfare fraud returned to the court to have the deferred sentence erased. MS. TOWNSEND replied that that is one thing they are resisting is to have her record erased, because she has not complied with the terms of her probation. She contended that she was the type of person who had the ability to pay - in fact, she bought a house, made the down payment on the house and bought a new car during the time she was on probation.

REPRESENTATIVE DAILY asked if they tried to get some money from her earlier. MS. TOWNSEND replied that the probation officer filed a notice of violation last summer; this was approximately about a year before her probationary period would have expired, if the court had agreed that they could run the two sentences consecutively; her probation officer had been on her back and when he is not able to get compliance, then his only alternative is to come to them to file a notice that her deferred sentence is being revoked and unfortunately the judge disagreed with them that they just could not do this.

REPRESENTATIVE DAILY asked if she received two deferred sentences. MS. TOWNSEND replied that she plead guilty to two separate offenses - one involved making false statements to get ADC money and the other was making false statements to get food stamps. She indicated that these occurred over two distinct times and they argued that these sentence were consecutive, but the judge contended that the most you could give in a deferred sentence was three years and what happened here is six years.

REPRESENTATIVE DAILY said that she went for five years and never made any payments. MS. TOWNSEND replied that she actually went for two or three years; she happened to be one of those people that got caught up in the good time issue i.e. in 1981, the session made an adjustment to make sure that people on provisional sentences could not earn good time; one of the reasons that her time was shortened was that her crime occurred before 1981; the probation officer made numerous attempts to try and force her and finally, as a last resort, turned to us.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 351

SENATOR HALLIGAN, District 48, Missoula, said this is the most serious measure to come before the session and it involves limiting psychiatric testimony in a criminal proceeding. He testified that since the Hinkley trial, there has been much more concern about the insanity defense; over the years, legislative bodies, lawyers, judges and others have demanded far more from psychiatrists concerning their expert testimony than he feels that they are able to give from their medical training. He stated that it is no fault of their profession that they have been asked to give testimony that is beyond their medical training. He presented to the committee a letter from NOEL L. HOELL, M.D., Psychiatry. See EXHIBIT F.

JOHN MAYNARD, Assistant Attorney General, gave a statement in support of this bill. See EXHIBIT G.

There were no further proponents.

DR. STRATFORD, a psychiatrist from Missoula, stated that he asked Dr. Hoell to come over here as he was a little unclear as to what he was responding to, when he wrote that letter. He advised the committee that he was a psychiatrist, he works at the prison and he has done a lot of criminal exminations and he probably does as many as anyone in Montana. He informed the committee of some of his concerns about this bill.

KARLA GRAY, representing the Montana Trial Lawyers' Association, stated that they oppose this bill and that SENATOR VAN VALKENBURG was suppose to be here to testify in opposition to this bill but he is appearing in another committee. She contended that when a psychiatrist gives an opinion on a defendant's mental state, it is just that - an opinion; it is not binding in the determination of any kind on the jury or anyone else. She noted that those opinions are subject to incredible and pervasive cross-examinations; the juries still make the determination and that is what juries are for.

REPRESENTATIVE FARRIS stated that she was appearing as the business manager of Farris Associates and she said that the associates were a forensic psychologist and two other therapists, who provide expert testimony in criminal defenses. She testified that psychologist spend fourteen years learning how to determine what other people are thinking when even the person involved might not know; they do this by standardized tests, by very specialized interviews and in addition there is the option of hypnosis. She contended that it was absolutely useless to have people with this kind of specialized knowledge and then say to them that you cannot tell us what you found out, and she felt that is what this bill does. She urged the committee to not pass this bill.

SENATOR HALLIGAN said at no time were they trying to take away from the psychiatrist's credibility to testify to those things with which they are expert; they can testify all they want to as to the fitness to proceed or any aspect of their mental condition. He contended that it only limits their testimony to the mental condition at the actual time the offense was committed. He alleged that no one can know that and no one can know that with a degree of certainty that is required of an expert. He stated that every other expert that they have on the stand has to be able to document and verify anything that they testify to. He felt that the juries can take a long look at all the testimony that is offered and then they can decide.

REPRESENTATIVE ADDY said that all this bill was doing was prohibiting testimony on the ultimate fact, i. e. psychiatrists can address all their findings and conclusions up to the ultimate fact; and his question is which way is the jury most likely going to be led to the truth, and which way is the jury most likely to be misled. He commented that it seemed to him that the jury might be misled just as much by allowing the psychiatrist to present findings of two different conclusions of facts, as well as allowing two different psychiatrists to testify to different ultimate conclusions. SENATOR HALLIGAN said that he felt neither one should testify as neither one would know; that they can give extremely educated guesses; but they do not have the expert status to ascertain the mental condition at the time the offense was committed.

DR. STRATFORD wondered what if both psychiatrists say that at the time of the commission of the crime, the man was mentally diseased and was psychotic; and there was concurrence; what if they do not have all the inferential evidence that attorneys are suppose to be able to pull together; but with the concurrence of the psychiatrists where does this leave the jury. He felt that it really does help the jury for them to take this further and try to form their own distinctions; to be able to convey their opinions and then they have to take the battering they do. He stated that he really objects to this whole line of evidence presented by Senator Halligan - that this is a whole accumulation of guesses and ruminatory stuff that they pull out of the air as they sit back in their chairs and smoke grass and think about the world. He contended that there is a lot of data that says that psychiatrists do their job pretty well, as far as being able to diagnose these things accurately; and he did not feel that he personally has that much trouble utilizing the Montana law with great certainty and getting down to having some opinion as to whether or not a man has a particular state of mind. He said that where they have the greatest problem is with other laws, wherein they say that they think the man had the capacity to conform

to conduct - this is a distinction between twilight and dusk; and that is where they have the most amount of trouble.

REPRESENTATIVE ADDY asked if he thought a jury is more likely to be misled if they had two ultimate conclusions in front of them or if they had no ultimate conclusion. DR. STRATFORD replied that that is the role of the jury - they are suppose to make those distinctions.

REPRESENTATIVE ADDY asked how much data should be given to the jury before they are turned loose to reduce professional testimony to common sense. DR. STRATFORD wondered if that was something that can be legislated.

REPRESENTATIVE ADDY said that is exactly what they are legislating - we are asking whether we should give them everything up to the ultimate conclusion; then send them into the jury room; or whether we are going to have two different experts give two opposite conclusions before they are sent into the jury room. He asked which way are they likely to get a correct result. SENATOR HALLIGAN responded that he did not think there was any way to reply to that. REPRESENTATIVE ADDY commented that it was a guess anyway.

There were no further questions and the hearing on this bill was closed.

EXECUTIVE SESSION

SENATE BILL 386

REPRESENTATIVE SEIFERT moved that this bill BE CONCURRED IN. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE EUDAILY moved to amend the bill on page 3, line 14, by striking "interested" and inserting "involved". The motion was seconded by REPRESENTATIVE JENSEN. The motion carried with REPRESENTATIVE RAMIREZ voting no.

REPRESENTATIVE RAMIREZ made a substitute motion that this bill BE NOT CONCURRED IN. He advised the committee

that he felt this bill was not very well conceived; he admitted that there was a problem that needed to be addressed, but he thought it should be addressed in some other way; and the committee should remember that the power to order contempt of court is probably the power that can be most easily abused; because the judge is the one who is the "victim", but he is also the judge; and he is the one who makes the determination. He stated that it is true that you have the right of appeal, but as the district court judge, who was here, indicated that a judge could say that he guessed he made a mistake; the supreme court reversed him but he guessed that that fellow could stay in jail anyway. He felt that this was a matter that should be approached with extreme caution; there is some very broad language in here that he does not know what it means and goes way beyond addressing the abuses they talked about. He indicated that they talked about someone harrassing them; he thought they could make a crime out of that and let the criminal procedures take over in that kind of a situtation, rather than giving the court the power to deal with that. He noted some of the vague language, i.e. "if someone attempts to influence the outcome of any matter pending before that judge in which the litigant or his attorney is involved". He contended that "involved" is not a very precise term and "interested" is at least something you know what it means. He alleged that even someone who files something with the court could be held in contempt if that document is scandalous or abusive. He again felt that those are terms that are not defined; and he thought one had better be careful when you say anything about the judge or what he did; because you might be accused of being scandalous or abusive. He continued that it also says, "an argument given in the judge's chambers in the presence of all parties to the proceeding"; it doesn't say attorneys; he is assuming that that means the parties represented by the attorney: but it does not say that. He continued "or fewer than all parties

when permitted by law" is confusing language. He felt that if not everybody was there, you must proceed at your own peril; because it may not be all that clear when you can proceed with less than all parties. He indicated that there are circumstances when not everybody can be there; if you proceed, you can be held in contempt; and he asserted that judges are human. He felt that this was giving a lot of power to judges and the language was not very clear. REPRESENTATIVE IVERSON seconded the motion.

REPRESENTATIVE IVERSON said that he would have to agree with what REPRESENTATIVE RAMIREZ contended; this gives a lot more judicial discretion than he thought they should be willing to grant; and he did not feel that it limits to what the circumstances might be surrounding the act that the judge might have to interpret. He alleged that this could go all the way to a conversation on a golf course; if the attorney happens to encounter the judge on a golf course and make a remark relating to what he may be defending, this is completely up to the judge to make an interpretation as to what he might have meant; and he did not feel that this was fair.

REPRESENTATIVE SPAETH stated that he would like to speak in favor of the motion for all the reasons previously given. He commented that this is called "back dooring the judge"; in law school he wrote an article about "back dooring" on third party contracts; and, since he has been in practice, he has found that it is not that big a problem as far as the legal process is concerned; he did not think this was the solution; he felt it was too broad and too vague; he felt they should give the judge a little more credit than what they are wanting to do here; while at the same time, they are taking away his discretion and giving him more power and he thought this was a contradiction.

REPRESENTATIVE JENSEN declared that he wanted to speak against this motion; they are trying to give the judges some kind of ability to isolate themselves so they can

make the kind of determination they need, which is an unbiased one and which means they get a fair trial. He contended that there are real problems in the real world that have nothing to do with theories; that without this bill, judges are going to continue to have these kinds of problems. He felt this was a problem that is just in its infancy - when someone comes up and nails signs on the judge's door in the middle of the night, or sleeps in their car for months at a time in front of the judge's house, that sort of thing can catch on with a bunch of folks out there and it is going to continue and it is going to get worse. He felt that in the interest of "nipping something in the bud", they should pass this bill. He indicated that he did not see all the "ghosts" in here that Representative Ramirez foresees, but he feels that they do have to make decisions in a somewhat isolated realm. He continued that he did not know what could be more contemptuous of the court and of the law than the kind of behavior that this bill does address. He advised that he has seen this happen in a more personal situation than the others; he did not think that people get a fair trial because of this type of thing; and he felt that they should do what they can to prevent this type of behavior and allow the judge at least some method to deal with it.

REPRESENTATIVE DAVE BROWN pointed out that this bill does not prevent the attorney and the litigant to have all their friends sit in the car out front.

REPRESENTATIVE RAMIREZ said that he recognized the fact that there can be a problem, but apparently it is not as broad a problem as they might be led to believe, because there was only one judge, who came in; the judges' association is apparently not that interested in this bill as they certainly did not appear; apparently that one judge has two or three isolated instances and maybe, it is the community he comes from. He noted the bill reads on page 4, line 1, "Procedure - contempt committed in the presence of the court, (1) When a contempt is committed in the immediate view and presence of the court or judge at chambers, it may be punished summarily, for which an order must be made reciting the facts as occurring in such immediate view and presence and adjudging that the person proceeded against is thereby guilty of a

contempt and that he be punished as therein prescribed. (2) Contempts described in 3-1-501(1)(m) are considered to be in the immediate view and presence of the court or judge." He emphasized that the judge is the victim, the prosecutor and the judge; he makes all the decisions; he determines that a contempt has been committed against him; he determines the facts; and then he imposes the penalty. He felt that if they have people harrassing judges, what they should do to make sure that that power is not abused, to punish people summarily, is to make that a crime, define that crime, and have it go through the regular court proceedings where that judge is disqualified since he is the victim, he could not sit on that particular crime. He thought this is the way to handle this without the abuse that is possible where the judge is the victim, the prosecutor, the judge and the jury.

The motion to BE NOT CONCURRED IN passed with all voting aye except REPRESENTATIVE FARRIS, VELEBER, JENSEN, ADDY and DAILY voting no. The vote was 13 to 5.

SENATE BILL 351

REPRESENTATIVE CURTISS moved that the bill BE NOT CONCURRED IN. REPRESENTATIVE SPAETH seconded the motion.

REPRESENTATIVE CURTISS explained that she felt that psychology and psychiatry are sciences that the average lay person simply does not understand and, because of this, testimony that they offer carries more weight; she thought they had more leeway than they should have and more status. She contended that if any two of them agreed on something, it would be great, but, depending on which school of philosophy they subscribe to they have all kinds of varieties of opinions on the same issue.

REPRESENTATIVE KEYSER stated that all expert witnesses that he has seen (and he has seen a lot of them and has been one) are asked basically at some time in the trial their opinion as to something that has happened. He contended that nobody knows the state of mind of a person who has committed an offense at the time the offense was committed; because by the time he testifies, by the time

the defendant has been checked, hours and days may have gone by and a great deal of time has elapsed. He contended that if an individual gives their opinion in a trial, they better well be prepared to back that up, when that defense attorney starts bearing into you, and you can't back it up, you look bad, especially in district court. He felt that from a matter of fairness, if they start limiting this one, they might limit other opinions. He commented that he does not have a tremendous feeling for psychiatrists, but he would have to go along with the DO NOT CONCUR motion.

REPRESENTATIVE CURTISS exclaimed that she meant this to BE CONCURRED IN. REPRESENTATIVE SPAETH said that he withdrew his second to this motion and made a substitute motion to NOT BE CONCURRED IN. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE FARRIS stated that psychiatrists and psychologists usually testify to the probable mental state rather than sitting on a limb that is going to be sawed off behind them in saying what exactly was the mental state. She offered amendments in the title, lines 6 and 7, by striking "and other experts" and on page 2, line 20, she advised that they have the expert offering medical diagnosis and only doctors offer medical diagnosis, so on line 20, the word "expert" should be changed to "psychiatrist" and on page 2, lines 5 and 6, lines 12 and 13 and line 25 they strike "or other expert". She commented that other experts could be highway patrolmen, psychologists or anyone else that had any particular reason to be there. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE RAMIREZ said that he agreed with Representative Harris that only a physician can give a medical diagnosis, but he wondered if they would be too restrictive in changing this because he would imagine it would ordinarily be a psychiatrist, but couldn't another doctor with psychiatric training make this diagnosis; and he wondered if it would be better if they said "or other medical expert". He said that it was his understanding that psychiatry is simply a medical specialty and, of course, you have to be a medical doctor to be a psychiatrist, but after that there are various ranges a person

who calls himself a medical doctor, can take and not call himself a psychiatrist. He also contended that medical doctors can express their opinion and he felt it should say "psychiatrists or other medical experts".

REPRESENTATIVE FARRIS replied that maybe they should change "medical diagnosis" and insert something else. REPRESENTATIVE RAMIREZ said no, leave medical diagnosis, but insert "and other medical experts". REPRESENTATIVE JENSEN commented that nurses can be medical experts. REPRESENTATIVE RAMIREZ responded that you can only get a medical opinion from a doctor.

REPRESENTATIVE SPAETH advised that when you present an expert in court, you have to qualify him as an expert, i.e. you have to show the background of training, the experience, etc. and that he is capable and qualified to make the statements that he is going to make. He thought maybe they were better off to just leave it like it is.

REPRESENTATIVE CURTISS said that she thought the underlying reason for bringing the bill in front of us is how we protect the public. She wondered if the person, who kills two of his children with an axe, is less guilty because his mental state was such that he did not know what he was doing and we should turn him loose and maybe let him do it again. She asked about a person who might be convicted of a heinous crime in this state and then went and decapitated someone else in California, because he was not considered to be capable of knowingly and purposely doing this. She thought that we should look at this very carefully.

REPRESENTATIVE JENSEN said that he thought that Represenative Curtiss had made a good point-that we ought not turn people loose, but he doesn't think the insanity defense is the issue in this bill. He contended that the question was to what degree do they allow expert witnesses to testify to their opinion based on their credentials. He alleged that in any other profession, there are conflicting issues that arise; for example, if an

engineer testified wherein a bridge had collapsed and there are engineers on both sides of that issue; they were asked of their opinion (and their opinion was pretty important) and considering the kind of empirical data that was available, the jury needed that kind of expert opinion.

A vote was taken on the motion to amend the bill. The motion failed with REPRESENTATIVE JAN BROWN, REPRESENTATIVE FARRIS and REPRESENTATIVE JENSEN voting aye.

REPRESENTATIVE CURTISS asked how often do psychiatrists testify when it is not a case wherein they use the insanity defense. She felt that they were talking about two kinds of expert witnesses and the one that is before them now is quite different than an engineer or a contractor.

REPRESENTATIVE JENSEN said the doctor that testified indicated there are a number of different realms in which they were brought in as expert witnesses - custody hearings - he gave a laundry list of areas where psychiatrist are considered experts and do testify and not only in criminal insanity.

CHAIRMAN BROWN pointed out that this bill only deals with criminal cases.

REPRESENTATIVE FARRIS indicated that there is compentency to stand trial and compentency to participate in their own defense.

REPRESENTATIVE SPAETH said that he did not feel that this bill is related to the sanity issue; he contended that you can have the psychiatrist testify all he wants; but you cannot have him reach any conclusions; that is what experts do; he has a lot of faith in how juries are able to sort through the chaft and determine whether the experts have anything good to say; he has a lot of faith in juries in this area; he wins with experts and he loses with experts and they can be the same experts on different cases. He did not see where they needed this bill and thought they should have confidence in the juries.

A vote was taken on the motion BE NOT CONCURRED IN and the motion passed with 15 voting aye and 4 voting no. See ROLL CALL VOTE.

SENATE BILL 65

REPRESENTATIVE JENSEN moved that this bill BE CONCURRED IN. REPRESENTATIVE DAILY seconded the motion. The motion carried unanimously.

SENATE BILL 225

REPRESENTATIVE JENSEN moved that this bill BE NOT CONCURRED IN. REPRESENTATIVE FARRIS seconded the motion.

REPRESENTATIVE FARRIS stated that this bill takes a voluntary commitment and turns it into an involuntary commitment; during the time they are in the institution, their civil rights are suspended and she did not feel that this was the right thing to do with a voluntary commitment. She noted there was testimony about understaffing problems at Warm Springs and about how the staff could not get to these matters in time; but she thought this should be addressed through the budget process. She indicated that there was other testimony that sometimes people are coerced into committing themselves because our commitment laws do not allow for involuntary commitments except in a case of physical endangerment of themselves or others and yet they are being really obnoxious and a problem to their family. She felt that this is a problem that should be addressed through the commitment laws.

REPRESENTATIVE KEYSER asserted that he disagreed with Representative Farris; he felt that giving them an extra five days to try and do something for that patient, especially if he was in a really intoxicated condition and it took them a day or two to bring him around before he even knew what was going on, would do no harm. He contended that they were just seeking this extra five days to try to start some kind of program for this person; and for that reason, he opposes the Be NotConcurred In motion.

CHAIRMAN BROWN pointed out a letter which was received from Kelly Moorse, Executive Secretary of the Mental Disabilities Board of Visitors. See Exhibit H.

REPRESENTATIVE JENSEN noted that the bill on page 2, lines 22 through 24 says, "he may be detained for the time necessary to process a commitment proceeding"; and to him this means that they have a paperwork problem; but he contended that that is not what they are up to here; they are trying to get more time with this individual; and, if that is the problem, they should deal with that problem in a forthright way and be honest about it. He felt that the bill should be killed.

REPRESENTATIVE EUDAILY commented that he had a note, which said that he suggested to reverting to the original language, which was the fifteen day thing plus an amendment, which was on page 2, lines 23 and 24 and deleting all that language.

MS. DESMOND indicated that this was her recollection also; he felt that returning it to five with the underlined language really did not mean anything and felt that it weakened the original intent, which was to give them five extra days; because he interpreted it as the time necessary to process a commitment proceeding to mean the time of the court proceeding. She continued that he interpreted the underlined language to mean that the petition still has to be filed within five days, but the person may be held until the court proceedings are completed, which he feels is what the present law says. She stated that he wanted to counteract what he felt had been done to weaken this bill

REPRESENTATIVE KEYSER said that he would move to strike the Senate language and put the bill back in its original form. REPRESENTATIVE HANNAH seconded the motion.

REPRESENTATIVE CURTISS commented that she thought it was Nick Rotering, who said that the proposed amendment would be acceptable to the Montana Mental Health Association and who had originally come in to oppose the bill.

CHAIRMAN BROWN advised that his understanding was that the Montana Mental Health Association likes the bill as it presently is, and they oppose it as it was originally written.

REPRESENTATIVE JENSEN said if they originally opposed the bill, they would also oppose the bill with Representative Keyser's amendment, because it would then be the original bill.

A vote was taken on the motion to amend and it failed with 4 voting aye and 13 voting no. See ROLL CALL VOTE.

REPRESENTATIVE HANNAH said that the individual who amended this bill as it is now was Senator Towe, who is a leading advocate of the Montana Mental Health Association; he is the original author of the bill when it came through the legislature two or three terms ago and he does not know why they are opposed to it.

REPRESENTATIVE BERGENE indicated that it is hard for her to vote for a bill which does not address the basic problem of the commitment law; that she felt that the commitment law is going to have to be brought out and addressed; she wished she had done it this session; because there are a lot of problems with it and she felt that Senator Towe meant well, but he does not understand how many problems there are with it.

A vote was taken on the motion to BE NOT CONCURRED IN. The motion carried with REPRESENTATIVE ADDY and REPRESENTATIVE DAILY voting no. The vote was 17 ayes and 2 nos.

SENATE BILL 201

REPRESENTATIVE RAMIREZ said he found some information; the uniform rule adopts transactional immunity as opposed to what the federal government has, which is use immunity. He alleged that there are two different situations where immunity is granted i. e. (1) is where the prosecution does know that a person is involved and they want to grant immunity and it is initiated by the prosecution; (2) someone is involved in a crime and he initiates voluntarily the information which they may need if they will give him immunity in return for this information. He

read from an article, which addressed some of the problems with use immunity and transactional immunity. He noted that transactional immunity reduces the need for extended court hearings and gives a broad flow of information to the government. He moved that this bill BE NOT CONCURRED IN. REPRESENTATIVE SPAETH seconded the motion.

REPRESENTATIVE KEYSER made a substitute motion to BE CONCURRED IN. REPRESENTATIVE HANNAH seconded the motion.

REPRESENTATIVE JENSEN noted that Marc Racicot felt the problem in Montana arises from transactional immunity in that they will get someone who is a coconspirator; he gets on the stand; he will say that he committed the crime and the first guy gets off because the jury is confused. He felt that they need to decide where they get justice more often.

REPRESENTATIVE FARRIS asked which way is it less likely to happen that everyone gets away. REPRESENTATIVE RAMIREZ replied that he thought it was debatable; the point that was made in the article is that when you give use immunity, you are not likely to get nearly as much information from the person you are granting immunity to because, even though that person's testimony cannot be used against him, he is still guarded, because you cannot use any evidence that this testimony leads to. He noted that, when you just have use immunity, you are not going to get as much information out of that person.

REPRESENTATIVE JENSEN asked if the jury can be instructed that a coconspirator has been granted immunity. REPRESENATIVE RAMIREZ replied that he was not sure; it was discussed in this article, but he did not read that part of it.

REPRESENTATIVE RAMIREZ indicated that it may be that what they want is a use immunity alternative, which would be in the discretion of the prosecutor to avoid this kind of problem. He wondered why they have to take one or the other; why couldn't they have a combination; you can in the sense that you can have a secret deal with the

county attorney, who gives use immunity and then promises secretly that he won't prosecute. He stated that he was inclined to kill this bill and come back next time with that option, giving them use immunity when it is a coconspirator situation.

REPRESENTATIVE KEYSER commented that, while it would be nice if they could use both of them, right now Montana uses transactional immunity; that is what we have and that is what we are stuck with; and he felt that if he were going to opt for the better of the two, (the one that turns fewer people loose, even though they may lose more information) then he would go for use immunity.

REPRESENTATIVE SEIFERT asked if this tightens up the immunity law, considering the way this bill is drafted. REPRESENTATIVE RAMIREZ replied that, in one sense, it does, but he disagrees with Representative Keyser. He contended it is is a judgment decision as to which is going to result in more people being convicted - if you can get more testimony, you can get more convictions. He cited an example, whereby a contractor is paid off by a public official through an intermediary; if you give this contractor only use immunity; (what you really want is to get at the public official) he is not going to tell you anything; because he is afraid that you might be able to come in the back door and still prosecute him on other evidence; so you are not going to get his full cooperation. He continued that if you give him full immunity, he is going to spill everything; because he is worried that you will come back on him. Under these circumstances, he wondered which one leads to prosecuting the most people; and he noted that the article in these arguments said that transactional immunity does. He stated that the only problem you have with use immunity is this situation where there is a coconspirator.

A vote was taken on the motion BE CONCURRED IN. The motion failed with 8 voting aye and 10 voting no. See

ROLL CALL VOTE. REPRESENTATIVE IVERSON moved that they reverse the vote. The motion carried unanimously.

REPRESENTATIVE KEYSER moved that the meeting be adjourned at 11:16 a.m.

DAVE BROWN, Chairman

Alice Omang, Secretary

STANDING COMMITTEE REPORT

March 11, 1983

MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 386

third reading copy (blue color)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A DIRECT COMMUNICATION TO A JUDGE BY A LITIGANT OR HIS ATTORNEY THAT IS INTENDED TO INFLUENCE THE OUTCOME OF ANY MATTER PENDING BEFORE THE JUDGE CONSTITUTES A CONTEMPT OF COURT; PROVIDING THAT ANY SUCH CONTEMPT IS CONSIDERED TO HAVE OCCURRED IN THE IMMEDIATE PRESENCE OF THE COURT OR JUDGE; PROVIDING INCREASED PENALTIES FOR THIRD AND SUBSEQUENT CONTEMPTS; AMENDING SECTIONS 3-1-501, 3-1-511, AND 3-1-519, MCA."

Respectfully report as follows: That SENATE Bill No. 386

BE AMENDED AS FOLLOWS:

1. Page 3, line 14
Strike: "interested"
Insert: "involved"

AND AS AMENDED
BE NOT CONCURRED IN

DO PASS

DAVE BROWN, Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 11, 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 351

third reading copy (blue color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO LIMIT OPINION TESTIMONY OF PSYCHIATRISTS AND OTHER MENTAL-HEALTH-PROFESSIONALS EXPERTS IN CRIMINAL PROCEEDINGS; AMENDING SECTIONS ~~46-14-212~~ AND SECTION 46-14-213, MCA."

Respectfully report as follows: That SENATE Bill No. 351

BE NOT CONCURRED IN

XXXXXX

DAVE BROWN, Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 11, 19 83

MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 65

~~third~~ reading copy (blue)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT ~~TO CLARIFY THAT WHENEVER A PERSON IS FOUND GUILTY OF TWO OR MORE CRIMINAL OFFENSES IN THE SAME PROCEEDING, AND PERMISSIBLE SENTENCE MAY BE IMPOSED FOR EACH~~ OFFENSE TO INCREASE THE TIME FOR WHICH SENTENCE FOR ANY OFFENSE MAY BE DEFERRED ~~OR SUSPENDED IF RESTITUTION IS IMPOSED~~; AMENDING SECTION 46-18-201, MCA."

Respectfully report as follows: That SENATE Bill No. 65

BE CONCURRED IN

DO PASS ~~XXXXX~~

Dave Brown, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 11, 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 225

third reading copy (blue color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXTEND THE DETENTION PERIOD OF A VOLUNTARY APPLICANT AT A MENTAL HEALTH FACILITY FROM 5 TO 10 DAYS PRIOR TO PETITIONING FOR COURT INVOLUNTARY FROM 5 TO 10 DAYS THE PERIOD OF TIME FOLLOWING A REQUEST FOR RELEASE IN WHICH A PERSON VOLUNTARILY COMMITTED TO A MENTAL HEALTH FACILITY MAY BE DETAINED FOR EVALUATION AND PROCESSING COMMITMENT PROCEDURES; PROVIDING THAT SUCH DETENTION IS ALLOWED ONLY IF THE PERSON HAS REQUESTED RELEASE DURING THE FIRST 15 DAYS OF HIS VOLUNTARY COMMITMENT; AMENDING SECTIONS 53-21-111 AND 53-21-112, MCA,"

Respectfully report as follows: That SENATE Bill No. 225

BE NOT CONCURRED IN

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

March 11 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 201

third reading copy (blue color)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT WHEN A WITNESS IS GIVEN IMMUNITY AND COMPELLED TO TESTIFY OR PRODUCE EVIDENCE, THE TESTIMONY, EVIDENCE, OR INFORMATION DERIVED FROM IT MAY NOT BE USED AGAINST HIM IN A CRIMINAL PROSECUTION; DELETING PROVISIONS THAT THE WITNESS MAY NOT BE PROSECUTED FOR TRANSACTIONS HE TESTIFIES ABOUT: AMENDING SECTIONS 30-10-221, 46-4-305, AND 46-15-311, MCA."

Respectfully report as follows: That SENATE Bill No. 201

BE NOT CONCURRED IN

DXRXSX

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

ROLL CALL VOTE ------ HOUSE JUDICIARY COMMITTEE

	Date:3/11 No: SB 351 Be Not Con- curred In	Date: 3/11 No: SB 225 Keyser's Amendment	Date: 3/11 No:SB 201 Be Concurred In	Date: No:	Date No:	Date No:	Date: No:
BROWN, Dave	yes	no	yes				
ADDY, Kelly	yes	—	yes				
BERGENE, Toni	yes	no	no				
BROWN, Jan	yes	no	no				
CURTISS, Aubyn	no	no	yes				
DAILY, Fritz	no	—	—				
DARKO, Paula	yes	no	no				
EUDAILY, Ralph	yes	yes	no				
FARRIS, Carol	yes	no	no				
HANNAH, Tom	no	yes	yes				
IVERSON, Dennis	no	no	yes				
JENSEN, James	yes	no	yes				
KENNERLY, Roland	yes	no	no				
KEYSER, Kerry	yes	yes	yes				
RAMIREZ, Jack	yes	no	no				
SCHYE, Ted	yes	no	no				
SEIFERT, Carl	yes	yes	yes				
SPAETH, Gary	yes	no	no				
VELEBER, Dennis	yes	no	no				
	15-4	4-13	8-10				

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 313 DATE March 11, 1983

SPONSOR SENATOR HALLIGAN

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
P. B. Tooley	Helena	Driver Services	✓	
[illegible]	Helena	High Traffic Safety	✓	
Jim Nugent	Missoula	City of Missoula	✓	
Leon Skaley	Missoula	City	✓	
Frances Alves	Missoula	City-Co. Health Dept	✓	
Betty Wing	Missoula	Task Force on Drunk Driving	✓	
GORDON POWELL	GT FALLS	MADD	✓	
Sarah Power	Helena	Atty General	—	
Cathy Campbell	Helena	Mont. Assn. of Churches	✓	

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

Exhibit E
SB313
3-11-83

WITNESS STATEMENT

Name GORDON POWELL Committee On _____

Address 432-25th Ave NE, Gt Falls Date 3-11-83

Representing M.A.D.D. Support ✓

Bill No. 313 Oppose _____

Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. I STRONGLY AGREE WITH THE INTENT OF THIS BILL. DUI IS DEFINED AS A CERTAIN LEVEL OF AN INTOXICANT & A CHEMICAL TEST IS THE ONLY WAY TO PROVE/DISPROVE

2. LET US NOT LET THE MISUSE OF THE PRIVILEGE TO DRIVE OUTWEIGH THE RIGHTS OF CITIZENS TO DRIVE & LIVE IN SAFTEY.

3.

4.

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

FORM CS-34
1-83

E

Exhibit A
SB313
3-11-83

PROPOSED AMENDMENT TO SB 313

Page 3, Line 16: amend "6 months" to read "1 year".

Page 4, Line 7: amend phrase "county wherein such person shall reside" to read "county wherein such person ~~shall~~ resides or in the district court in the county in which the arrest was made."

Exhibit B
SB313
3-11-83

TO: HOUSE JUDICIARY COMMITTEE MEMBERS

FROM: JIM NUGENT, MISSOULA CITY ATTORNEY

RE: SENATE BILL 313 - ALLOWING ARRESTING OFFICER TO SEIZE DRIVER'S LICENSE OF D.U.I. OFFENDER WHO REFUSES TO SUBMIT TO A CHEMICAL TEST

DATE: MARCH 10, 1983 Memo 83-47

I would like to take this opportunity to strongly urge your support for the enactment of Senate Bill 313 allowing an arresting officer to immediately seize the driver's license of any person refusing to submit to a chemical test and providing for suspension or revocation of the license by the Motor Vehicle Division. Allowing the immediate seizure of the driver's license of the individual who refused the breath test will greatly alleviate the problem the Motor Vehicle Division has obtaining the driver's license of the offender who refuses to voluntarily turn in his/her license pursuant to State law.

Increasing the time period of suspension of the driver's license of the individual who refused to submit to a chemical test will help to serve as a deterrent to individuals operating a motor vehicle while the individual is under the influence of alcohol. It will also facilitate the prosecution of offenders for the reason that fewer people will be as likely to refuse to submit to a chemical test. A sixty (60) days'suspension does not serve as much of a deterrent to refusing to submit to a chemical test or to driving while under the influence of alcohol. Also, it is my understanding that in order for the State of Montana to be eligible for federal monies for the purposes of preventing driving and drinking, the periods of suspension of a driver's license for refusing to submit to a chemical test must be at least ninety (90) days for a first offender and at least one (1) year for a subsequent offender within a five (5) year period. This will require an amendment to SB 313 to increase the suspension of the offender's driver's license from the existing proposal of six (6) months to one (1) year.

I would urge your support of Senate Bill 313 with the suggested amendment.

Thank you.

Respectfully,

Jim Nugent

Jim Nugent
Missoula City Attorney

JN/jd
cc: Police Chief Sabe Pfau
Municipal Court Judge Wallace N. Clark

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 260 DATE March 11, 1983

SPONSOR SENATOR HALLIGAN

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
P.B. Tooley	Helena	Driver Services	✓	
D. Dahl	Helena	Mont. Safety	✓	
Jim Nugent	Missoula	City of Missoula	✓	
Leon Stalcup	Missoula	City of Missoula	✓	
Betty Wing	Missoula	Task force on drunk driving	✓	
Sarah Power	Helena	Atty General	—	
Cathy Campbell	Helena	Mont. Assn. of Churches	✓	

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

WITNESS STATEMENT

Name Cathy Campbell Committee On Justice

Address ~~30~~ Helena Date March 11, 1983

Representing Mt. Assn. of Churches Support ✓

Bill No. SB 260 + 313 Oppose _____

Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. See attached comments endorsing legislation that will effectively impede the menace of driving under the influence of alcohol or other drugs.

2.

3.

4.

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

FORM CS-34
1-83

MISSOULA COUNTY
OFFICE OF THE ATTORNEY
MISSOULA COUNTY COURTHOUSE
MISSOULA, MONTANA 59802
TELEPHONE: (406) 721-5700

ROBERT L. DESCHAMPS III
COUNTY ATTORNEY

Exhibit C
SB 260
3-11-83

Betty Wing
Deputy County Attorney

Proponent of Senate Bill 260

Proposed amendments:

Amend Section 61-8-101(c) to read "apply upon all public lands of the state or its subdivisions and all ways of this state open to the public. For the purposes of this section and 61-8-401 through 61-8-404, "ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public. ~~with the express or implied consent of the owner.~~

Exhibit D
SB260
3-11-83

TO: HOUSE JUDICIARY COMMITTEE MEMBERS

FROM: JIM NUGENT, MISSOULA CITY ATTORNEY

RE: SENATE BILL 260 - EXTENDING THE GEOGRAPHICAL AREA FOR THE APPLICABILITY OF LAWS ON DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL

DATE: MARCH 10, 1983 Memo 83-46

Dear House Judiciary Committee Members:

I would like to urge your support for legislation that will extend the geographical applicability of laws prohibiting the oepration or physical control of motor vehicles while under the influence of alcohol to include geographical areas of this state in addition to "highways of this state" (Section 61-8-401(1)(a), M.C.A.).

I have prosecuted driving under the influence (D.U.I.) cases for the City of Missoula for nearly eight (8) years. I am aware of many fact situations within the City of Missoula limits where the City police have either apprehended or been called to a location where a D.U.I. offender is off the highway and is in such places as a park, boulevard, school campus yard, parking lot, a yard, at a service station's fuel pumps, railroad property, or other property owned by a public entity. Some of these incidents involved accidents and some did not. When I commenced prosecuting D.U.I. cases for the City of Missoula in June, 1975, the Revised Codes of Montana allowed the prosecution of all D.U.I. offenders who were anywhere in the state, including those on the types of property identified above. However, in 1979, during recodification of State laws to the Montana Code Annotated, it is my understanding that a very lengthy legislative bill labeled as a style change bill altered codified D.U.I. statutory language to the effect that it eliminated a prosecutor's ability to prosecute driving under the influence of alcohol offenders anywhere in the state and limited the prosecutorial power to the "highways of this state". Ironically, however, a prosecutor may still prosecute anyone who operates or is in physical control of a motor vehicle while he/she is under the influence of a narcotic drug or any other drug anywhere they are found "within this state".

I have never personally made a survey of other state laws in order to compile a definite total as to how many states allow prosecution of D.U.I. offenders no matter where they are located within the respective state. I do have personal knowledge from writing legal briefs and reading many supreme court cases from other states over the years that many states do allow the prosecution of D.U.I. offenders no matter where in the state they are discovered. They use such statutory language as "anywhere in the state" or "upon the highways and elsewhere throughout the state". A person who is operating or in physical control of a motor vehicle while under the influence of either alcohol or drugs is a serious threat or danger to persons and property whether the D.U.I. offender is on a highway or located elsewhere in the state. State legislative bodies have a very legitimate and real responsibility and duty to be concerned about regulating drivers who are under the influence of alcohol in geographical areas other than strictly upon the "highways of this state". Further, individuals exposed to the dangers of the individual under the influence of alcohol who operates or is in physical control of a motor vehicle while under the influence of alcohol have a right to be protected from those D.U.I. offenders no matter where they are operating in this state.

D

The text of 29 A.L.R.3d 938, in discussing the issue of prosecuting D.U.I. offenders anywhere within a state, set forth the following passages from court cases discussing this issue which are appropriate for your consideration:

> ". . . it would be absurd, said the Court, to say that one could not be convicted of driving while intoxicated under this statute merely because at the time of the violation the driver happenedto be on a private roadway instead of on a public street or highway, because no one can say when such a person in his confused and befuddled state of mind will leave the private road and pursue a mad, zig zagging course down a public highway or street, with the resulting damage and horrors so frequently reported." 29 A.L.R.3d 938, 942. Also, see State v. Carroll, 225 Minn. 384, 31 NW 2d 44 (1948). (emphasis supplied)

In Cook v. State, 220 Ga. 463, 464, 139 SE2d 383, the Court pointed out that:

> "the court pointed out that the widespread use of motor vehicles, and the use of extensive private property for shopping centers and other purposes with intricate mazes of roadways and driveways, indicated the need for protection of the public from drivers under the influence of intoxicants on places other than public streets and highways. The court further noted that there was ordinarily no immunity from prosecution for crime because the act was committed on private property, even the private property of the accused, and that a person had the freedom to use his property as he pleased only so long as he did not thereby endanger the rights of others." 29 A.L.R. 3d 949-950.

The Court in People v. Guynn, 338 NE2d 293, 33 Ill.App.3d 736, 3 National Traffic Law News 71 at 72 (1975), stated the following while upholding the constitutionality of an Illinois statute allowing prosecution of D.U.I. offenders anywhere in the state:

> ". . . . Similarly, in Farley v. State (1965), 251 Miss. 497, 170 So 2d 625, the court gave consideration to the language which made it illegal for an intoxicated person to 'drive any vehicle within the State.' The court in that case stated that the statute 'is not a road regulation but a prohibition against an intoxicated person operating an automobile.' The court found that this was logical because of the potential danger when an intoxicated person operates a motor vehicle. It was stated in the Farley case that a person in an intoxicated condition might not remain off the highway and actually might injure others in other places." See also: State v. Carroll (1948), 225 Minn. 384, 31 NW2d 44. (emphasis supplied)

Therefore, I would strongly urge your enactment of legislation during this legislative session that would extend the ability to prosecute D.U.I. offenders under the influence of alcohol to all geographical areas in addition to the highways of this state. Senate Bill 260 is a step in the right direction, but it does not adequately address the problem. It is erroneous to assume that the operator of a motor vehicle who is under the influence

of alcohol will only operate their motor vehicle upon a way maintained for public travel. Therefore, I request that you enact legislation that does fully and adequately address the problem of the drinking driver by amending Senate Bill 260 to allow prosecution of drivers under the influence of alcohol anywhere in this state. Please see the attached proposed amendment which would do this.

Thank you.

Respectfully,

Jim Nugent
City Attorney

JN/jd

cc: Police Chief Sabe Pfau
Judge Wallace N. Clark

Proposed Amendments to Senate Bill 260

1. Page 1, lines 6 through 9, amended to read as follows:

"influence of alcohol to ANYWHERE WITHIN THIS STATE ~~roads-and-parking-areas-adapted-for-public-travel-and used-by-the-public-with-the-consent-of-the-owner;~~ Amending Sections 61-8-101 and 61-8-401 through 61-8-404, M.C.A."

2. Page 1, lines 23-25 amended to read:

"(c) the provisions of 61-8-401, SHALL BE APPLICABLE ANYWHERE WITHIN THIS STATE.~~,-except-subsections-(1)(b),-(1)(c),-and-(2)-thereof,-and-61-8-402-through-61-8-405-apply-upon-all-ways-of-this-state-open-to-the~~"

3. Page 2, lines 1 through 6, delete the following:

~~"public.--For-the-purposes-of--this-section-and 61-8-401-through-61-8-404,-'ways-of-this-state-open-to the-public'-means-any-highway,-road,-alley,-lane,-parking area,-or-other-public-or-private-place-adapted-and-fitted for-public-travel-that-is-in-common-use-by-the-public-with the-express-or-implied-consent-of-the-owner.~~

4. Page 2, line 25, amend to read:

"of a motor vehicle ANYWHERE WITHIN THIS STATE ~~upon-the highways-ways-of-this-state-open~~

5. Page 3, line 1, delete:

~~"to-the-public"~~

6. Page 4, lines 19 and 20, amend to read:

"Any person who operates a motor vehicle ANYWHERE WITHIN THIS STATE ~~upon-the-public-highways-ways-of-this-state open-to-the-public-shall-be~~

7. Page 5, lines 4 and 5, amend to read:

"physical control of a motor vehicle ANYWHERE WITHIN THIS STATE ~~upon-ways-of-this-state-open-to-the-public-highways of-this-State-while-under-the~~"

8. Page 5, lines 19 and 20, amend to read:

"vehicle ANYWHERE WITHIN THIS STATE ~~upon-ways-of-this state-open-to-the-public-highways-of-this-state-while-under-the-influence-of-alcohol-and-that~~"

9. Page 6, line 19, amend to read:

"ANYWHERE WITHIN THIS STATE ~~upon-ways-of-this-state-open-to the-public-highways-while~~"

10. Page 7, line 14, amend to read:

"ANYWHERE WITHIN THIS STATE ~~upon-ways-of-this~~ state-open-to ~~the-public-highways-while~~"

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 386 DATE March 11, 1983

SPONSOR SENATOR HALLIGAN

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Jim Wheelis	224 Closby Missoula	self (Judge of the Justice Dist)	✓	
Ed McLean	500 Benton	Missoula Co. Atty's Off	✓	

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

VISITOR'S REGISTER

HOUSE JUDIICIARY COMMITTEE

BILL SENATE BILL 65 DATE March 11, 1983

SPONSOR SENATOR HALLIGAN

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Karen Townsend	Missoula	self	✓	

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 351 DATE March 11, 1983

SPONSOR SENATOR HALLIGAN

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Karla Gray	Butte	MTLA		X

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

SB 351
3/11/83

NOEL L. HOELL, M.D.
PSYCHIATRY

525 WEST PINE
MISSOULA, MONTANA 59802

(406) 721-6050

March 9, 1983

Senator Mike Halligan
Capitol Station
Helena, Montana 59620

Dear Senator Halligan:

I have been asked to provide you with a summary statement, if I understand my instructions accurately, concerning the American Psychiatric Association stand on the Insanity Defense. I am told that you have access to the APA position paper formulated by Dr. Loren Roth. I have studied that document but seem to have misplaced it today; I intended to review it before preparing this letter. I hope that my summary statements will accurately reflect the American Psychiatric Association stand on this issue.

I should point out that I am a psychiatrist in private practice in Missoula, Montana, am Board Certified in Psychiatry, am the President-Elect of the Montana Psychiatric Association, and serve as the Legislative Representative for the Montana Psychiatric Association. I occasionally testify in court on criminal issues involving the question of mental illness.

The American Psychiatric Association, and the Montana Psychiatric Association, feel that there is a definite and appropriate place for psychiatric testimony in criminal cases where the question of mental illness has been raised. We feel that psychiatrists, with a background in medical training as well as psychological expertise, are most fully qualified as "expert witness" among all the professional groups having to do with the diagnosis and treatment of mental disorders. The fact that psychiatrists frequently disagree with each other in their courtroom testimony, while inevitably disquieting, should be neither a surprise nor a matter of significant concern; experts in all fields of science, and not just those involving human behavior, often take opposing sides. That does not mean that psychiatric testimony in an insanity case is not relevant or helpful to juries trying to resolve difficult issues.

Psychiatrists are primarily trained to diagnose and treat mental illness. What they are asked to do in a criminal trial involving the insanity plea is often somewhat foreign to their usual professional activity. Psychiatrists are asked to provide an opinion about a person's state of mine and its effects on his behavior at the time the act in question occurred, and while psychiatric training is valuable in addressing this question, and psychiatric diagnosis has achieved

a much higher level of reliability than is publicly recognized, it is not surprising that there are disagreements when such a retrospective inquiry is made. Under the adversary system, psychiatrists have often found themselves requested or encouraged to provide a very specific opinion as to the mental state of an individual just prior to the commission of a crime. Psychiatrists are not in the courtroom to decide the ultimate issue of guilt or innocence but only to provide expert testimony to help jurors make that determination. In most situations, it is highly unlikely that anyone can tell with any degree of certitude what the state of mind of the defendant was before and during the commission of the act. The scientific disagreements in an insanity case are intensified by two legal factors - the psychiatrists are testifying on the basis of retrospective inquiries into the patient's condition and they are testifying under the rules of the adversary system which demand a "yes" or "no" answer on matters that are seldom resolvable in such clear terms. Since disagreements on medical conclusions may have an impact on these important moral decisions by jurors, it is often made to seem as if the psychiatrists are responsible for the moral judgement themselves, rather than for the presentation of medical testimony.

It is felt that there is probably no way to completely eliminate the use of the insanity plea in one form or another. Although opinion in the profession is divided, many American psychiatrists feel that substitution of a guilty but mentally ill verdict is really no solution at all and may in fact further complicate things.

The prediction of future dangerousness in a given individual is an equally hazardous and uncertain undertaking, and it is generally agreed in the profession that such predictions do not carry a high rate of reliability.

As I have not had a matter to discuss this with you personally, I can only hope that the foregoing statements will be useful to you.

Sincerely yours,

Noel L. Hoell, M.D.

NLH/sm

Exhibit G
SB 351
3/11/83

SB 351 — John Maynard
Assistant Attorney General

SB 351 places a further restriction on the testimony of psychiatrists and other experts in criminal trials. The restriction is narrowly drawn yet very significant.

In 1979, the insanity defense was abolished in Montana to the extent permitted by the state and federal constitution. Simply stated this means that the prosecution must prove every statutory element of an offense beyond a reasonable doubt. Testimony concerning a defendant's "ability to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law" —— the traditional insanity defense —— is no longer admissible at a criminal trial to determine if the defendant is guilty. (That testimony can only be considered at the time of sentencing to determine appropriate disposition of the defendant — prison or hospital.)

SB 351 places an additional restriction on psychiatric testimony by prohibiting a psychiatrist from offering an opinion to the jury on whether the defendant had the statutorily defined state of mind at the time he committed the offense.

Permitting a psychiatrist to testify about this ultimate issue requires that he make a leap in logic. He no longer addresses himself to medical concepts but instead must infer or intuit the probable relationship between medical concepts and legal concepts. [redacted] These leaps in logic

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made by expert witnesses confuse the jury.

Dr. Lee Coleman, who heads the Institute for the Study of Psychiatric Testimony at Berkeley California, has stated:

> "Despite our fond hopes, no one has a way of "examining" someone's state of mind, past or present. . . . The best anyone can do is to draw inferences as to mental state, based on behavior or speech."

This bill permits the jury to draw those inferences and decide those questions without having to first listen to conflicting and confusing testimony by persons whose expertise does not qualify them to give such opinions in the first place.

I urge its passage.

OFFICE OF THE GOVERNOR
MENTAL DISABILITIES BOARD OF VISITORS

TED SCHWINDEN, GOVERNOR

CAPITOL ANNEX BLDG.

STATE OF MONTANA

(406) 449-3955

HELENA, MONTANA 59620

March 9, 1983

Representative Dave Brown
House Chambers
State Capitol
Helena, Mt 59620

Dear Representative Brown:

I am writing in opposition to Senate Bill 225. This bill, with the proposed amendments, would allow Warm Springs State Hospital to detain a voluntary admission ten days, if the written request is made within the first fifteen days following admission. In effect, this proposed amendment suspends the civil rights and due process rights of an individual for fifteen days.

The five day detention has been in effect since 1976. The staff of Warm Springs have been able to meet the necessary time frames and conduct evaluations in order to determine whether or not to involuntarily commit the person to Warm Springs. In addition, the hospital has people under observation for twenty-four hours per day, where professionals in the community have only one to three days to determine whether to petition the court for an involuntary admission.

The Board of Visitors, in its mandate to protect patient rights, continually encounters the "involuntary-voluntary" admission to Warm Springs. If this bill is passed, these individuals would again experience a suspension of their rights to due process, as well as to a hearing.

The present law provides protection of an individual's rights. The proposed ten day extension does not provide equal protection for those who voluntarily commit themselves to Warm Springs. Please do **not** pass this bill.

If you wish to discuss this matter further, please contact me.

Sincerely,

Kelly Moorse

Kelly Moorse
Executive Secretary

KM/it