

MINUTES OF THE JUDICIARY COMMITTEE
March 22, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown at 9:07 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.

EXECUTIVE SESSION

SENATE BILL 237

REPRESENTATIVE JENSEN moved that this bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE BERGENE.

CHAIRMAN BROWN passed out copies of proposed amendments that were discussed with Senator Halligan. He said that Senator Eck was here relating to her bill, SB 391, in case there were any questions that the committee wished to ask.

REPRESENTATIVE CURTISS indicated that she had some real problems with one of the remarks that was made yesterday wherein she said that they are now making a profit off that program for Cascade County, and she did not understand how they could be making a profit if the restitution is to be made to the victims of the crime, how they could have anything left over for the county.

REPRESENTATIVE JENSEN replied that he asked them and they said that they were making a little on short term interest; when they receive funds before the distribution of those funds, they accrue some money in those funds for a few days and they are interest-bearing funds and that is the only excess revenue that they have. He said that he did not get any figures from her, but apparently it is not all that much money. He felt that if they were going to have some money sitting in a bank account, they should draw some interest.

REPRESENTATIVE BERGENE stated that this reduces the cost that the county has.

REPRESENTATIVE CURTISS wondered if this bill mandates that one of these restitution officers be set up in all of these counties. She noted that they were apparently able to do that in some of the counties now, but she wanted Ms. Desmond to respond to this.

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MS. DESMOND replied that her interpretation of the bill is that it does not affect the county's authority to set up a county restitution program especially with the amendments that Senator Halligan proposed, which say the supervision of the restitution may be done by any other designated person. She thought this would mean that the county could have someone else do it, such as a clerk in a J.P. court.

REPRESENTATIVE FARRIS indicated that she did not understand the amendments on pages 3 and 4; there are other kinds of restitution than cash; the Voluntary Action Program in Great Falls has a whole program wherein people, who do not have money and don't want to go to jail, can do public service; and she did not know if this bill addresses that kind of thing or not. She wondered why close the door to other kinds of restitution,

MS. DESMOND responded that she thought it was because this bill only deals with restitution to the victim; and that restitution, under the existing law, could include those things they are talking about.

REPRESENTATIVE FARRIS felt that this changes the existing language - this doesn't change anything else; on lines 14 and 16 on page 3, she noted that it crossed out "or other restitution: and "or performs"; and she wondered if this was not already existing language. MS. DESMOND replied that this is existing language in this bill, but that is not existing language in 46-18-201.

REPRESENTATIVE FARRIS said that this whole bill is all new language then. The response was yes.

REPRESENTATIVE JENSEN stated that there are a couple attorneys' opinions; he did not know if there was an attorney general's opinion or not, that muddies the water. He explained that the judge will order someone to do some work to provide for restitution; then someone came up with the idea that if that were the case whereby employment was being forced on someone, then the county would have to pick up all the costs of that employment, such as unemployment insurance, workmen's compensation, etc.; and the Missoula County Attorney wrote an opinion that said yes, the county was responsible for any injury that might

arise to the worker out of any of his work done by the order of the court. He contended that there were a couple of counties - he thought Kalispell and one other - that were not willing to pay that money so they cannot assign someone to do the work.

REPRESENTATIVE FARRIS exclaimed that this was involuntary servitude.

B. LESLIE VINING, Senate Aide to Senator Eck, stated that in many of the smaller counties they do not have all these individuals to do the work and she explained the proposed amendments to the committee.

REPRESENTATIVE JENSEN commented that the last amendments refer to a bill that has already passed, which lengthens the time someone has to pay.

REPRESENTATIVE HANNAH moved the adoption of these amendments. The motion was seconded by REPRESENTATIVE CURTISS. The motion carried unanimously.

REPRESENTATIVE JENSEN moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE KEYSER seconded the motion. The motion carried unanimously.

SENATE BILL 391

CHAIRMAN BROWN explained that the basic difference between these two bills is that this bill applies to all sentences, while Senator Halligan's bill applies to suspended or deferred sentences. He passed out amendments that were proposed for this bill. See EXHIBIT B.

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

REPRESENTATIVE BERGENE moved that the amendments be adopted. REPRESENTED FARRIS seconded the motion.

MS. VINING explained that on page 12, lines 3 through 25, this is the original language that is in the codes now except for two areas: in subsection (ii) where it says, "jail time not exceeding 90 days" is changed to 180 days to

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conform with the bill that was just passed; and subsection (v) is added, which says "payment of costs of confinement". She noted that there was also a subsection that was not included on page 12, line 19, which stated "(vii) payment of costs of court appointed counsel as provided in 46-8-113." She said that what the amendments are actually doing are retaining all of the original language in the codes with the exception of increasing jail time to 180 days and adding "payment of costs of confinement" and the rest of the bill would be deleted.

CHAIRMAN BROWN said that this basically reinserts the bottom of page 11 and all of page 12.

REPRESENTATIVE HANNAH questioned why are they doing this. MS. VINING replied that she did not know why, but Senator Eck felt that there was some language, which she and the Senate Judiciary thought was necessary, but there was not enough time to amend it; she later went through the bill; found the important parts and she thought that this should be included within this section of codes.

REPRESENTATIVE DAILY questioned on page 12, lines 22 through 25 and on page 11 if the Senate Judiciary Committee struck that language or was this the original part of the bill. MS. VINING replied that the underlining of "must and" and "shall require restitution" were the amendments that Senator Eck originally wanted put in the bill and the Senate Judiciary Committee did not feel that the "must" should be in there and so deleted the whole thing. Senator Eck felt that this was an important part of the bill and she wants to put in the original with those amendments.

CHAIRMAN BROWN said that what they basically have is the existing statute; by striking it, the Senate left the existing statute as it is on the books and what Senator Eck wants to do is just take that piece of statute that is on pages 11 and 12 and put it back in the bill and amend it as she has proposed on the sheets.

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REPRESENTATIVE JENSEN asked why it was effective on passage and approval. REPRESENTATIVE KEYSER said that he had a note to change it. REPRESENTATIVE ADDY said that if they strike the effective date, it will be effective October 1.

The motion carried with REPRESENTATIVE HANNAH, REPRESENTATIVE KEYSER, REPRESENTATIVE RAMIREZ, REPRESENTATIVE CURTISS, REPRESENTATIVE DAILY and REPRESENTATIVE IVERSON voting no.

REPRESENTATIVE ADDY moved to amend the bill by striking Section 9 on page 21, lines 20 and 21, which is the effective date. REPRESENTATIVE KEYSER seconded the motion.

The motion carried unanimously.

REPRESENTATIVE EUDAILY noted that on page 21, they have struck the repealer section too and he wondered if that is what they wanted to do. He said if you don't repeal them, they are back in the statutes.

REPRESENTATIVE ADDY explained that section 46-8-114 provides the time and methods of payment of costs and 46-8-115 describes the effect of non-payment of costs and he thought that it would be consistent with the philosophy of restitution to leave those in.

CHAIRMAN BROWN said that we also do not need the codification section.

REPRESENTATIVE JENSEN moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE FARRIS seconded the motion.

REPRESENTATIVE CURTISS said that there were a lot of bad things in this bill; she believed in restitution, but this doubles the penalties; and that it makes felonies out of misdemeanors. REPRESENTATIVE ADDY replied that it does the opposite - if you stole \$300.00 today, you would be guilty of a felony and if you pass this bill, you will be guilty of a misdemeanor.

REPRESENTATIVE RAMIREZ said that he would like to speak against this bill, too; because he thought \$150.00 should be changed as the dividing line between misdemeanors and

felonies, but he did not like \$500.00. He continued that they could steal for \$500.00 or less and only commit a misdemeanor things such as a television set, a microwave oven, etc., and he thought that \$500.00 was extremely high and this would also be true as far as writing checks; a person could write a check for \$499.00, which is quite a healthy bad check and he would be guilty of only a misdemeanor. He indicated that he could not support that high a figure.

REPRESENTATIVE ADDY asserted that what Senator Eck is trying to do with this bill is move some of the district court caseload into justice court; in doing this the maximum fine is \$500.00 and the maximum confinement is 6 months and in order to speak to the high limits here, she has also inserted all these alternatives such as restitution so that justice court with the maximum fine and the maximum confinement would still do justice to the case with restitution alternatives. He thought this was the philosophy of the bill and was what Senator Eck was trying to do.

REPRESENTATIVE BERGENE said that she had a concern about the bad check as well because she wants to be sure that while they are battling to put the "shall" language back would the conference committee have any kind of conflict with this where it says "may".

REPRESENTATIVE IVERSON commented that he felt there was more to it than just a bad check problem; it seemed to him that they have removed any incentive not to steal \$450.00 because chances are all that is going to happen to you is that you will have to pay it back; and those odds are pretty good.

REPRESENTATIVE FARRIS declared that it just amazed her in reading the statistics column in the Great Falls Tribune wherein somebody writes a bad check for \$29.00; goes to jail for 6 weeks and has to have a bond for \$250.00. She thought this would seem as though writing a bad check was the worst possible, heinous crime and she felt it was all out of proportion for a \$29.00 bad check. She stated that she understood that people were not prosecuted for the first bad check.

REPRESENTATIVE SPAETH said that he thought that Senator Eck was trying to move it from the district court to the justice court system to help relieve the caseload; and in the real world, the check for \$455.00 is not going to go to Deer Lodge; he is going to spend a little time in the county jail at the most. He insisted that you don't go to Deer Lodge for stealing less than \$500.00; you don't get any more than what a justice court would impose except the possibility of a longer deferred imposition of sentence; and that is the only difference that you may lose or change.

REPRESENTATIVE RAMIREZ stated that he did not agree with REPRESENTATIVE SPAETH on this particular issue; some of the people out there are going to know exactly what they have done - someone who plays the system for all it is worth - and it may be that someone is not necessarily on the first offense going to go to Deer Lodge, but you certainly have some leverage. He said that if you believe at all that punishment or the potential of punishment is a deterrent, this would seem to say to him that if a misdemeanor means you can steal up to \$500.00 or write a bad check for this amount and if they are just trying to get these people into justice court rather than district court, he did not feel that that is the way the criminal justice system should work.

REPRESENTATIVE ADDY asked what he thought the proper dividing line should be. REPRESENTATIVE RAMIREZ responded that whatever figure you put there is arbitrary and he did not know how long it has been at \$150.00.

REPRESENTATIVE ADDY said that in 1917 it was \$25.00 and it was changed to \$150.00 in 1973.

REPRESENTATIVE DAILY commented that we are not talking about a nice guy here; we are talking about a guy going into somebody's house and stealing something; crime is on the increase and he thought that \$150.00 is just perfect and he felt that is where they should leave it.

REPRESENTATIVE ADDY said that breaking into someone's house is burglary and they don't make that a misdemeanor.

REPRESENTATIVE JENSEN noted that it has been his experience that the toughest judges are not district judges; if you want to get a pretty stiff sentence and to be dealt with more severely is to let it be handled by the J.P. court. He thought if you consider the number of district judges they have and how they view these kind of cases vs. the number of J.Ps they have and the way they view these cases, you are going to find hard and soft in any court, but there are a lot more hard eggs than soft eggs in the J.P. court.

REPRESENTATIVE FARRIS wondered if punishment really deters people from committing crimes; she thought that somebody who is committing burglary is not thinking too far ahead and they don't think they are going to get caught so they did not think the punishment was going to affect them anyway. She continued that she supposed there are some people out there who do evaluate whether they can write a check for \$499.00, but she thought they were few and far between compared to the person who writes a bad check because they do not have any money until pay day and they think they need some goods or services.

REPRESENTATIVE SPAETH commented that that is something else about a J.P. court - it is easier to get convicted and it is easier to get a trial - and he felt that you rarely see the inside of a district court on these kind of deals anyway; and it is a different world in a J.P. court.

REPRESENTATIVE ADDY wondered at what dollar amount would the judge take the case seriously; a J.P. may look at a \$400.00 case as a very serious matter; a district court judge may look at a \$200.00 case as a waste of his time and a big pain. He mentioned raising the amount to \$300.00, but stated that if you reduce the increase too much, there will not be many cases moved from district court to justice court. He thought that \$500.00 was a fairly good dividing line between what a district judge would take seriously and what a J.P. would take seriously. He continued that he is glad that they have some bills in the legislature that address restitution and he felt that too often society has thought retribution for the sake of society and has not thought restitution for the sake of the victim.

REPRESENTATIVE KEYSER said that if you take pressure off the district court, you put pressure on the J.P. court

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and he felt that many of the J.P. courts are filled more than the district courts and this will undoubtedly add to the J.P. courts; some of them are loaded far more than they want them to be loaded and they may be coming in for extra J.Ps.

REPRESENTATIVE IVERSON said that he liked the bill, but he has trouble with the \$500.00 figure. He moved that the bill be amended on page 2, line 20, by inserting \$300 in lieu of \$500 and throughout the bill where it is appropriate. REPRESENTATIVE ADDY seconded the motion.

The motion carried with REPRESENTATIVE BERGENE, REPRESENTATIVE DAILY and REPRESENTATIVE HANNAH voting no.

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE DAILY questioned on page 11, Section 9, which is existing law, if they killed this bill or tabled this bill, would all that language still be in the law. REPRESENTATIVE ADDY replied that that is right.

REPRESENTATIVE DAILY asked if the only thing the bill does is change the amount from \$150.00 to \$300.00, changes the 90 to 180 days and adds that section (v). REPRESENTATIVE ADDY responded in the affirmative.

The motion carried with 11 voting aye and 7 voting no. See ROLL CALL VOTE.

SENATE BILL 138

REPRESENTATIVE J. BROWN moved that the bill BE CONCURRED IN. REPRESENTATIVE DAILY seconded the motion.

CHAIRMAN BROWN noted that he checked the language on page 4 that he was concerned about and there is no problem with it.

REPRESENTATIVE HANNAH stated that he could not support the bill because most bills they get are single titled, single ~~purposed~~ and they get a chance to review that and a chance to talk about the pros and cons, they get a chance to hear

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testimony and here they have a bill that is 160 pages that has multiple changes dealing with bringing the laws into uniform conformity with other states. He felt that this bill is not totally uniform with other states; it has been amended and changed; he felt they may be good changes; but he had not had the opportunity or the time to listen to the testimony on this; and for this reason, he cannot support the bill.

CHAIRMAN BROWN explained that the reason for this bill coming over fairly late was that the Senate did spend an enormous amount of time on it; they had a two-hour work session with Professor Wise, going through it page by page, line by line, and he wanted to point out that at least one body had spent the time required. He indicated that Professor Wise is agreeable to spending the hours with us if we want him to do so.

REPRESENTATIVE HANNAH exclaimed that he has taken some very nice bills to the Senate and they have never seen the light of day.

There was no further discussion and the motion carried with REPRESENTATIVE KEYSER and REPRESENTATIVE HANNAH voting no.

SENATE BILL 194

REPRESENTATIVE FARRIS moved that the bill BE CONCURRED IN. REPRESENTATIVE JAN BROWN seconded the motion.

MS. DESMOND passed out some proposed amendments. See EXHIBIT C. She explained that she could not remember who requested the amendments, but there was some question about whether the clerk of the district court or the jury commissioner should be permitted or required to excuse jurors from the jury, and the feeling was it would be better to have that responsibility with the judge.

REPRESENTATIVE RAMIREZ informed the committee that he was the one that asked for these amendments; but he got very effectively lobbied on this, because he changed his mind; he talked to a couple clerks of the court; his concern was that the judges were not tough enough; they excused too many people; and the clerks of the court convinced him that they would be

as tough or tougher in this. He continued that the other thing that made him willing to go the other way is that they use to have standards as to who could be excused and who could not be excused; somehow, those were eliminated; he felt there was a better chance, if this does not work and too many people are excused by the clerks, of getting standards imposed upon them than if they tried to impose the standards upon the judges. He said that he did not want to move the adoption of these amendments as he would like to see if this works.

CHAIRMAN BROWN thought that the bill had been amended in the Senate to show that this would have to be with the approval of the court so that the judge had a choice.

REPRESENTATIVE ADDY replied that that was right.

REPRESENTATIVE RAMIREZ declared that he thought that was more illusionary than real because the judge will say do what you want. CHAIRMAN BROWN responded not the ten judges he has heard from - they do not want the clerk of the court to have anything to do with jury selection.

REPRESENTATIVE JENSEN commented that maybe this is a good time that we should take that choice away from them. CHAIRMAN BROWN answered that if they do that, he will do everything he can to kill this bill.

REPRESENTATIVE SPAETH said that he would have to disagree; that if he wanted to go in and be excused, he could guarantee that he could be excused, except maybe in the big cities, a lot easier by the clerk of the court than he could from the judge. He explained that he may not even bring up some of the reasons that he might wish to be excused with the judge and he felt that in small towns, the clerks and the court are part of the little "good boy" system in the courthouse and if you are part of the "good boy" system that operates there, you are going to get off of jury duty and he thought that it would be easier to get excused by the clerk of the court than it is by the judge. He continued that maybe in the bigger cities that may not be the case, but in rural Montana, this is true.

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REPRESENTATIVE KEYSER said that he dealt with some small area judges and he felt that they were about equal; the judges are not too tough about excusing people - not near as tough as he thinks they should be; and he has no more problem with the clerk of the court than he does with the judge.

REPRESENTATIVE RAMIREZ indicated that their objective was to make it a little tougher for people to be excused; we have some judges who are really tough, and with the Senate language, they are probably going to exercise pretty good control; and for the ones who are lax, if they leave it with the judges, at least they have a chance to see if the clekrs might be a little tougher; and if they are not tougher, they could put some standards in down the road. He finalized that he was willing to go with the bill as it is and see how it works.

CHAIRMAN BROWN noted that they had one judge in Butte, Arnold Olson, who requires that you must be on your death bed in order to be excused from jury duty, and he will even question that too.

There were no further questions or discussion and the motion carried with REPRESENTATIVE SPAETH, REPRESENTATIVE DAVE BROWN, REPRESENTATIVE EUDAILY and REPRESENTATIVE SEIFERT voting no. The vote was 15 to 4.

SENATE BILL 2

REPRESENTATIVE KEYSER moved that the bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE HANNAH.

REPRESENTATIVE KEYSER said that the provision to handle the constitutional problems or any other problems that were brought up in the testimony are definitely handled on the next page, and he would assume that those are Senate amendments. He then said that this was new language that was put in, but he felt that it was well covered and he does not have any problem with it. He continued that there was definitely protection for the man who has had an incompetent attorney that has not done the job for him; and he

thought that on line 13, page 2, subsection 3, where it says, "material and controlling facts upon which the claims is predicated were not known to the defendant or his attorney and could not have been ascertained by the exercise of reasonable diligence" that this would give him all the coverage he needs. He did not think there was any testimony that this did not protect the defendant.

REPRESENTATIVE SPAETH said that he at first was hesitant about this bill, but he felt that it was a matter of fairness that a person, when he is at trial, that his attorneys will make deliberate decisions about when they will object or not object, and if he decides not to object, this gives him a second time around, the way the law is presently directed. He commented that if the attorney fails to object and he does not know why he did not object, he may have incompetent counsel. He closed by saying that he thought it was a good bill.

REPRESENTATIVE ADDY noted that when it comes to jurisdictional rights, the court can raise these questions on its own motion; he felt that this bill was headed in the right direction.

REPRESENTATIVE FARRIS commented that when she first heard this, she felt hampered by not being a lawyer or not being around courts very much; but she is looking at it from the point of view of a person who is not a lawyer and is not around the courts very much. She thought that in reading the last section, there may be something that is not known to the defendant or the attorneys; the attorney could know things that the defendant does not know and if the attorney got squished in a car accident, the defendant could be sitting in jail knowing nothing and he would not have the right to appeal. She contended that you cannot claim constitutional rights if you did not do it when you were talking about it in the trial and this did not make any sense to her. She stated that she certainly wanted to limit appeals as much as anyone else but she felt that this was a bad bill and she contended that it does not make sense to put this kind of pressure on people to notice everything that is going

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on around them during the stress and strain of a trial; and then say, well, if you did not speak up then you do not have a chance to speak at all.

REPRESENTATIVE CURTISS pointed out that the interim committee on judiciary worked very hard on this over a two-year period; they had a lot of testimony, they had attorneys, they had the attorney general's people; the judges commented and it did not seem to be that big a problem. She felt it was an area that has to be addressed if they are going to tighten up the appeals system.

REPRESENTATIVE ADDY declared that this bill addresses what questions can be appealed in the state system and it does not foreclose going to the federal system after going through the state system. He contended that this will not bar anybody from saying that their constitutional rights have been violated and kicking it over into the federal system.

There was no further discussion and the motion carried with a vote of 13 ayes and 6 nos. See ROLL CALL VOTE.

REPRESENTATIVE KEYSER will carry the bill on the floor of the House.

SENATE BILL 201

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE JENSEN.

REPRESENTATIVE ADDY moved to amend each section of the bill by inserting at the end of each section the following language: "Nothing in this section shall be construed to prohibit the prosecutor from granting immunity from prosecution on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in his sole discretion, that the ends of justice would be so served." He explained that what they are saying is that when a prosecutor does not think he needs to grant transactional immunity; when the prosecutor gets into a situation where he feels that they are not going to get the cooperation of the codefendant, the prosecutor does have the option

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under this statute to grant transactional immunity. He continued that it also makes it clear that it is the sole discretion of the prosecutor in this amendment. REPRESENTATIVE JENSEN seconded the amendment.

REPRESENTATIVE HANNAH questioned if this meant that they can do either one. REPRESENTATIVE ADDY replied yes.

REPRESENTATIVE RAMIREZ said that he thought this would work and the main thing is where the judge compels the prosecutor to grant immunity. He wondered if this was made clear enough. REPRESENTATIVE ADDY explained that the judge can't compel transactional immunity and he should only be able to compel use immunity and that is why you leave it up to the prosecutor.

There was no further discussion on the amendment and the motion carried unanimously.

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE KEYSER seconded the motion. The vote was 14 ayes and 5 nos with REPRESENTATIVE FARRIS, REPRESENTATIVE VELEBER, REPRESENTATIVE DAVE BROWN, REPRESENTATIVE JENSEN, and REPRESENTATIVE EUDAILY voting no.

SENATE BILL 260

CHAIRMAN BROWN indicated that the committee had comparison sheets on the DUI bills. See EXHIBIT E and EXHIBIT F.

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

REPRESENTATIVE KEYSER moved to amend the bill on page 2, line 5, following "public" by striking the rest of that language and the language on line 6, which states "with the express or implied consent of the owner". He contended that this would raise so many problems in a court or with an officer that it would absolutely be unworkable.

REPRESENTATIVE JENSEN said this would take out the legal argument that they did not have express or implied consent.

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CHAIRMAN BROWN wondered if the language, "in common use by the public" would imply that the bar parking lot, etc. would not be affected by this. REPRESENTATIVE KEYSER explained that it says, "fitted for public travel that is in common use by the public" and this would handle the parking lot and that.

REPRESENTATIVE CURTISS said that she has a note that says that language has been upheld by the Washington state court. REPRESENTATIVE KEYSER asked "with the express or implied consent of the owner". He indicated that Betty Wing or one of them raised that question that that language would lead to a lot of problems. He commented that Washington does a lot of funny things.

REPRESENTATIVE FARRIS indicated that the testimony was that the language had been upheld in the court but this is just one more thing that you have to prove and that you have to argue about.

REPRESENTATIVE SPAETH asked if this was the same language that they worked on in HB 808. CHAIRMAN BROWN said that this is the same definition as is in HB 808, but that HB 808 is dead.

REPRESENTATIVE KEYSER noted that this would also have to be stricken in the title.

There was no further discussion and the motion carried with REPRESENTATIVE DAVE BROWN, REPRESENTATIVE RAMIREZ, REPRESENTATIVE SPAETH and REPRESENTATIVE IVERSON voting no.

REPRESENTATIVE DAVE BROWN moved that the bill be amended on page 3, line 3, by striking "within this state" and insert "upon ways of the state open to the public" and the same on lines 6 and 7. REPRESENTATIVE JENSEN seconded the motion. The motion carried unanimously.

REPRESENTATIVE JENSEN moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE BERGENE seconded the motion. The motion carried with REPRESENTATIVE SEIFERT and REPRESENTATIVE DAVE BROWN voting no. The vote was 17 ayes and 2 nos.

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SENATE BILL 313

REPRESENTATIVE DAVE BROWN noted that this bill was similar to HB 808, which was officially tabled in the Senate Judiciary as of yesterday, and HB 540, the per se law, had not been acted on, but would probably be tabled on this date. He informed the committee that Senator Turnage expressed the opinion that anytime a machine takes the place of a judge, that they are in trouble.

REPRESENTATIVE FARRIS moved that this bill BE CONCURRED IN. REPRESENTATIVE BERGENE seconded the motion.

CHAIRMAN BROWN moved that the bill be amended on page 1, line 17, by striking "the public highways of this state" and inserting "ways of the state open to the public" and also on page 2, line 2, page 2, line 21, page 4, line 7. REPRESENTATIVE SPAETH seconded the motion.

The motion carried unanimously.

REPRESENTATIVE KEYSER moved to amend the bill on page 4, line 7, by striking "shall reside" and inserting "resides or in the district court in the county in which the arrest was made". REPRESENTATIVE IVERSON seconded the amendment.

CHAIRMAN BROWN wondered if this meant that if hewere picked up in Yellowstone County, would they take him back to Butte. REPRESENTATIVE ADDY replied that it would be your choice.

CHAIRMAN BROWN clarified by saying you would still have a choice and could do it either place, but under the existing statute you would have to go back to the county in which you reside.

REPRESENTATIVE SPAETH said that he was not sure why they were doing this. MS. DESMOND replied that one reason that was given was that students that are arrested that are in school in Missoula, if they want to appeal under existing law, have to go back to the counties in which they reside.

The motion carried unanimously.

REPRESENTATIVE JENSEN noted the language on page 3, line 4 wherein it says, "the peace officer shall issue a temporary driving permit, which is valid for 72 hours after the time

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of issuance." REPRESENTATIVE FARRIS wondered why they did not offer an amendment to strike section 4.

REPRESENTATIVE RAMIREZ said that before you take someone's license away, they might have some things they need to deal with, such as taking their automobile back to their home. He explained that an individual might be arrested in Missoula and living in Billings; or they may be on a trip or something like that.

REPRESENTATIVE JENSEN asked why they do not give them a 72-hour notice to appear.

REPRESENTATIVE RAMIREZ commented that it also gives them an opportunity to appeal.

REPRESENTATIVE KEYSER explained that the whole reason for taking the license away at the time is administrative as it stops the hassle of going back out and picking up a man's license at a later date; and there is some legitimate reasons for giving him extra time. He explained that an individual has been arrested, maybe he has been in the drunk tank until he can sober up; then he should be able to take the car and go home. He noted that is why they need to give him that three-day permit.

REPRESENTATIVE FARRIS exclaimed that this doesn't say after he is sober, he can drive. REPRESENTATIVE KEYSER said they are arresting him for it, but he is usually either locked up or they take him home. He continued that they still have that license and the license is no good anyway after the end of that third day.

REPRESENTATIVE CURTISS wondered if this language conforms to the guideline whereby the department is trying to get the \$1 million. LARRY MAJERUS, Administrator of the Motor Vehicle Department of the Department of Justice, informed the committee that this issue is not addressed in any of the federal guidelines; when they talk about immediate suspension, they are talking about picking up the driver's license; the reason for the 72-hours is that in subsection 4, it says that the police officer shall seize the driver's license on behalf of the division; the suspension really does not take place until the affidavit is reviewed by the division; and

the suspension will usually take place some three days later. He explained that normally the police officer will place it in the mail within 24 hours; they will receive it within 24 hours; and they will suspend the same day they receive it. He said it takes three days to suspend the license and there was some concern, that if you suspend it, the individual can still drive anyway; and in giving him a slip of paper that shows he is pending suspension, this would serve the purpose.

REPRESENTATIVE JENSEN asked what then is the reason for taking the license. MR. MAJERUS replied that if they don't take the license, then normally in 60 per cent of the cases, they will have to send out a pickup order, which means they will write a letter asking them to submit their license and only 40 per cent of the people do submit their license; then the patrolman has to physically go and secure the license.

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN AS AMENDED. The motion was seconded by REPRESENTATIVE RAMIREZ.

REPRESENTATIVE SPAETH said that he thought if they refuse to take a breathalyzer test, they should not be allowed to drive, and he felt that the whole purpose of the bill is to encourage people to take a breathalyzer.

REPRESENTATIVE JENSEN asked if the refusal to take the breathalyzer test can be construed as an admission of guilt. REPRESENTATIVE SPAETH replied that he did not say that this was to be construed as an admission of guilt or innocence; but when you get your driver's license, you agree to comply with certain requirements and one of these requirements is that you will take a breathalyzer test.

The motion carried with 12 voting aye and 7 voting no. See ROLL CALL VOTE.

REPRESENTATIVE BERGENE wondered about the suggestion that they had concerning an interim committee that might look at the insanity defense along with the commitment laws and she asked if they should have a committee bill. She informed the committee that she checked with the mental health center in Great Falls and talked with two of the psychiatrists there;

Judiciary Committee
March 22, 1983
Page Twenty

and they thought that the implementation of the insanity defense is confusing; but basically they thought that it was good. They felt that too often psychiatrists play God, she stated, but there is a lot of confusion over the law; but it is being implemented, although there are some attorneys who are trying to skirt around it.

She advised that they felt the commitment law was basically good, but it needs some work to clear it up because of the impact on those families where some individuals who really should be committed are not being committed because some people are not able to make a judgment.

She continued that they felt a very serious problem that people in Montana have not spoken of is with the individuals on the Indian Reservations, other than the Flathead Reservation, who do not have a tribal agreement with the health centers and who simply will not come into the community because they want to take care of these matters within their tribe; and, yet, they do not have the facilities to do this; and this causes a lot of problems. She indicated that the mental health people are quite concerned about this and wondered if this could be discussed quite openly at the same time.

REPRESENTATIVE KENNERLY commented that he know that there are problems.

REPRESENTATIVE CURTISS moved that Senate Bill 347 be taken off the table for consideration. REPRESENTATIVE IVERSON said that he did not agree with what Representative Curtiss is trying to do at all. He explained that he thought they were going to have to pass that bill or something like it, but he thought that HB 888 is extremely critical; and he felt they should see if they can shake it loose over there. He stated that there are some bullheaded people doing some dumb things; he is not talking about holding it hostage or anything like that; it is just that it is not treated with any sense over there; and he thought it would be better to wait. REPRESENTATIVE CURTISS withdrew her motion.

REPRESENTATIVE JENSEN said, in relation to Representative Bergene's concerns, considering the tenure of the comments of the psychiatrists that maybe a bill to address this should be considered in the next session. REPRESENTATIVE BERGENE

Judiciary Committee
March 22, 1983
Page Twenty-one

indicated that she thought, before something could go into a bill, it should come out of a study, as it would be such a hard thing to do without some kind of study.

CHAIRMAN BROWN noted that he has no objection to doing this, but he would rather see this be introduced on a different basis; but he really did not care if the committee wanted to do this.

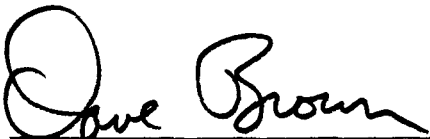
REPRESENTATIVE BERGENE said that she understood and she just asked them the questions.

CHAIRMAN BROWN emphasized that he appreciated the work that everyone has done and that when conference committees come along that both he and Ms. Desmond are available for whatever purposes they might need.

REPRESENTATIVE BERGENE informed the committee that the American Psychiatric Association is working on a model bill that will speak to the commitment laws, and, on that basis, they could have a bill.

CHAIRMAN BROWN offered a public thank-you to Ms Desmond for all her good work and also a thanks to Ms. Omang for all her work during the last half of the session.

REPRESENTATIVE KEYSER moved that the hearing be adjourned at 10:53 a.m.



DAVE BROWN, Chairman



Alice Omang, Secretary

STANDING COMMITTEE REPORT

1 of 2

March 22, 19 83

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **237**

Third reading copy (**blue**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A PROCEDURE
FOR RESTITUTION TO VICTIMS OF CRIMES BY THE CRIMINAL OFFENDERS
AND A PROCEDURE UPON DEFAULT IN PAYMENT OF RESTITUTION."**

Respectfully report as follows: That **SENATE** Bill No. **237**
BE AMENDED AS FOLLOW:

1. Page 1, line 21.

Following: **"OFFICER"**

Insert: **", restitution officer, or other designated person"**

2. Page 3, lines 11 and 12.

Following: **"the"**

Strike: **"statutory" through "offense" on line 12.**

Insert: **"period for which the sentence has been suspended or deferred
under 46-18-201"**

3. Page 3, line 14.

Following: **"payment"**

Strike: **"or other restitution"**

XXXX
DO PASS

..... March 22, 19 33

4. Page 3, line 16.

Following: "pay"

Strike: "or perform"

5. Page 3, line 22.

Following: "officer"

Insert: ", restitution officer, or other designated person"

6. Page 3, lines 23 and 24

Following: "payment"

Strike: "or other performance"

7. Page 4, lines 14 and 15.

Following: "the" on line 14.

Strike: "statutory" through "offense" on line 15.

Insert: "period for which the sentence has been suspended or deferred
under 46-18-201"

AND AS AMENDED
BE CONCURRED IN

STANDING COMMITTEE REPORT

March 23, 1981 19.....

SPEAKER

MR.

JUDICIARY

We, your committee on

SENATE

391

having had under consideration Bill No.

Third reading copy (blue)
color

"AN ACT TO GENERALLY REVISE CRIMINAL PENALTIES; INCREASING THE DOLLAR AMOUNT REQUIRED TO BE INVOLVED IN A CRIME BEFORE PENALTIES FOR THAT CRIME ARE INCREASED; PROVIDING FOR REIMBURSEMENT TO THE COUNTIES OF CERTAIN COSTS OF CONFINEMENT; REQUIRING MANDATORY RESTITUTION; PAYMENT OF COSTS OF COURT-APPOINTED COUNSEL; AND REPAYMENT OF CERTAIN COSTS OF CONFINEMENT REIMBURSED BY THE STATE TO THE COUNTIES; AMENDING SECTIONS 45-6-101, 45-6-301, 45-6-309, 45-6-311, 45-6-316, 45-6-317, 45-6-325, AND 45-7-210, 46-8-112, 46-8-113, AND 46-18-201, MCA; REPEALING SECTIONS 46-8-114 AND 46-8-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

SENATE

391

Respectfully report as follows: That Bill No.

Be amended as follows:

1. Title, line 7.

Following: "INCREASED"

Insert: "INCREASING TO 180 DAYS THE TIME PERIOD THE COURT MAY ORDER THE DEFENDANT TO BE CONFINED IN JAIL AS A CONDITION OF A DEFERRED OR SUSPENDED SENTENCE; PROVIDING THAT AS A CONDITION OF A DEFERRED OR SUSPENDED SENTENCE, THE COURT MAY ORDER THE DEFENDANT TO PAY THE COST OF SUCH CONFINEMENT;"

2. Title, line 13.

Following: "45-7-210,"

Insert: "46-18-201,"

3. Title, line 13.

Strike: "; and through "DATE" on line 15.

XXXXXX
DO PASS

DAVE BROWN

Chairman.

March 23, 1983

4. Page 2, line 20.

Strike: "\$500"

Insert: "\$300"

5. Page 4, line 19.

Strike: "\$500"

Insert: "\$300"

6. Page 4, line 22.

Strike: "\$500"

Insert: "\$300"

7. Page 6, line 3.

Strike: "\$500"

Insert: "\$300"

8. Page 6, line 7.

Strike: "\$500"

Insert: "\$300"

9. Page 7, line 1.

Strike: "\$500"

Insert: "\$300"

10. Page 7, line 5.

Strike: "\$500"

Insert: "300"

11. Page 8, line 4.

Strike: "\$500"

Insert: "300"

12. Page 9, line 16.

Strike: "\$500"

Insert: "\$300"

13. Page 10, line 25

Strike: "\$500"

Insert: "\$300"

14. Page 11, line 18.

Strike: "\$500"

Insert: "\$300"

15. Page 14, following line 10.

Insert: "Section 9. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving

March 23

19 83

under the influence of alcohol or drugs, for a period not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

- (i) jail base release;
 - (ii) jail time not exceeding 99 180 days;
 - (iii) conditions for probation;
 - (iv) restitution;
 - (v) payment of the costs of confinement;
 - ~~(vi)~~ (vi) payment of a fine as provided in 45-18-231;
 - ~~(vii)~~ (vii) payment of costs as provided in 46-18-232 and 46-18-233;
 - ~~(viii)~~ (viii) payment of costs of court appointed counsel as provided in 46-8-113;
 - ~~(ix)~~ (ix) community service;
 - ~~(x)~~ (x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or
 - ~~(xi)~~ (xi) any combination of the above.
- (b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(xi).
- (c) impose a fine as provided by law for the offense;
- (d) require payment of costs as provided in 46-18-232 or payment of costs of court appointed counsel as provided in 46-8-113;
- (e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;
- (f) impose any combination of subsection (1)(b) through (1)(e).
- (2) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.
- (3) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).
- (4) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended.

March 23, 1983

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(5) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended."

16. Page 21, lines 20 and 21.

Strike: Section 9 in its entirety.

AND AS AMENDED
BE CONCURRED IN

STANDING COMMITTEE REPORT

March 22, 1983

SPEAKER,

MR.

JUDICIARY

We, your committee on

SENATE

138

having had under consideration Bill No.

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BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE MONTANA'S
MODIFICATION OF THE UNIFORM COMMERCIAL CODE BY SUBSTANTIALLY ADOPTING
THE 1972 AND 1977 CHANGES RECOMMENDED BY THE UNIFORM LAW COMMISSIONERS;
AMENDING SECTIONS 30-1-105, 30-1-201, 30-2-107, 30-2-207, 30-2-702,
30-4-208, 30-5-114, 30-5-116, 30-8-102 THROUGH 30-8-107, 30-8-201,
THROUGH 30-8-208, 30-8-301 THROUGH 30-8-320, 30-8-401 THROUGH 30-8-406,
30-9-102 THROUGH 30-9-106, 30-9-203 THROUGH 30-9-205, 30-9-301,
30-9-302, 30-9-304 THROUGH 30-9-306, 30-9-308, 30-9-309, 30-9-312,
30-9-313, 30-9-318, 30-9-401 THROUGH 30-9-407, 30-9-501, 30-9-502,
30-9-504, AND 30-9-505, MCA; AND REPEALING SECTION 30-9-408, MCA."

SENATE

Respectfully report as follows: That Bill No. 138

BE CONCURRED IN

~~DO NOT~~ PASS

B. CO.

DAVE BROWN,

Chairman.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

z March 22 1933

SPEAKER:
MR.

JUDICIARY
We, your committee on

SENATE
having had under consideration Bill No. 194

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color

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY AMEND AND CLARIFY THE LAWS RELATING TO JURY SELECTION; ELIMINATING THE REQUIREMENT FOR BALLOT CAPSULES; SPECIFYING THE DUTIES OF THE CLERK OF THE DISTRICT COURT; PROVIDING FOR PAYMENT OF WITNESS EXPENSES AND THE COSTS OF IMPANELING A JURY FROM THE DISTRICT COURT FUND; REQUIRING PAYMENT OF PART OF THE INTEREST ON THE TRUST FOR UNLOCATED MINERAL OWNERS TO THE DISTRICT COURT FUND; AND AMENDING EXEMPTIONS FROM JURY SERVICE; AMENDING SECTIONS 3-5-510, 3-5-511, 3-15-204, 3-15-205, 3-15-312, 3-15-313, 3-15-501, 3-15-502, 3-15-503, 3-15-507, 7-33-2314, 7-33-2315, 25-7-202 THROUGH 25-7-204, 25-7-206, 25-7-208, 25-7-209, AND 46-17-202, AND 62-1-304, MCA."

SENATE
Respectfully report as follows: That Bill No. 194

BE CONCURRED IN

XXXXXX
DO PASS

STANDING COMMITTEE REPORT

March 22,

19 33

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 2

third reading only (blue)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING, EXCEPT UNDER CERTAIN CIRCUMSTANCES, APPELLATE REVIEW OF ALLEGED ERRORS NOT OBJECTED TO DURING A CRIMINAL TRIAL; AMENDING SECTIONS 46-29-104 AND 46-20-702, MCA."

Respectfully report as follows: That SENATE Bill No. 2

BE CONCURRED IN
DO:2662x

STANDING COMMITTEE REPORT

March 23,

19 33

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 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 30-10-304, 30-14-221, 46-4-395, AND 46-15-311, MCA."

Respectfully report as follows: That **SENATE** Bill No. **201**

be amended as follows:

1. Title, line 9.

Following: **"ABOUT"**

Insert: **", BUT PROVIDING THAT WHEN THE PROSECUTOR DETERMINES THAT IT IS IN THE INTEREST OF JUSTICE, HE MAY GRANT THE WITNESS IMMUNITY FROM PROSECUTION FOR SUCH TRANSACTIONS"**

2. Page 3, line 14.

Following: **"case"**Strike: **"except"** through **"testifying"** on line 15

Insert: **"Nothing in this section prohibits the commissioner from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the commissioner determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena."**

~~DO PASS~~

March 23,

19 83

3. Page 5, line 10.

Following: "prosecution"

Strike: ", except" through "testifying" on line 12

Insert: "Nothing in this section prohibits the commissioner from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the commissioner determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena."

4. Page 5, line 20.

Strike: "immunity to"

Following: "subpoenaed"

Insert: "immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence against that person in any criminal prosecution. Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on an account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in his sole discretion, that the ends of justice would be served thereby"

5. Page 5, line 24.

Strike: "such"

6. Page 6, line 1.

Following: "him"

Strike: ", but" through "prosecution" on line 4.

7. Page 7, line 1.

Following: "prosecution"

Strike: ", except" through "testifying" on line 3

Insert: "Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given in any testimony required under this section."

AND AS AMENDED
RECOMMENDED
BE CONCURRED IN

STANDING COMMITTEE REPORT

1 of 2

March 22

19 83

MR. **SPEAKER:**

JUDICIARY

We, your committee on

SENATE

having had under consideration Bill No. **260**

Third reading copy (blue)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXTEND 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;
AMENDING SECTIONS 61-8-101 AND 61-8-401 THROUGH 61-8-404, MCA."

SENATE

Respectfully report as follows: That Bill No. **260**

BE AMENDED AS FOLLOWS:

1. Title, line 7.

Following: "PUBLIC"

Strike: "WITH" through "OWNER" on line 8.

2. Page 1, line 21.

Following: "upon"

Strike: "highways" through "state" on line 22

Insert: "all ways of this state open to the public"

3. Page 2, line 5.

Following: "public"

Strike: "with" through "owner"
on line 6.

4.

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DEPASS

March 22,

83.

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4. Page 3, line 3.

Following: "vehicle"

Strike: "within this state"

Insert: "upon ways of this state open to the public"

5. Page 3, line 6.

Following: "vehicle"

Strike: "within this state"

Insert: "upon ways of this state open to the public"

AND AS AMENDED

~~XXXXXXXXXXXX~~

BE CONCURRED IN

STANDING COMMITTEE REPORT

1 of 2

March 22, 1933

MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 313

third reading copy (blue)
color

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AN ARRESTING OFFICER TO IMMEDIATELY ~~SUSPEND OR REVOKE~~ SEIZE THE DRIVER'S LICENSE OF ANY PERSON REFUSING TO SUBMIT TO A CHEMICAL TEST; PROVIDING A PERIOD OF REVOCATION-AND 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; AMENDING SECTIONS 61-8-402 AND 61-8-403, MCA."

Respectfully report as follows: That SENATE Bill No. 313

BE AMENDED AS FOLLOWS:

1. Title, line 7.

Following: "PERSON"

Strike: "REFUSING"

Insert: "DRIVING UPON WAYS OF THIS STATE OPEN TO THE PUBLIC WHO REFUSES"

2. Title, line 10

Following: "SUSPENSIONS;"

Insert: "PROVIDING THAT AN APPEAL OF SUSPENSION MAY BE FILED IN THE DISTRICT COURT IN THE COUNTY IN WHICH THE ARREST WAS MADE AS WELL AS IN THE DISTRICT COURT IN THE COUNTY OF THE DRIVER'S RESIDENCE;"

DO PASS

3. Page 1, line 17.

Strike: "the" through "state" on line 18.

Insert: "ways of this state open to the public"

4. Page 2, line 2.

Strike: "the" through "state" on line 3.

Insert: "ways of this state open to the public"

5. Page 2, line 21.

Strike: "the" through "state" on line 22

Insert: "ways of this state open to the public"

6. Page 4, line 7.

Following: "person"

Strike: "shall reside"

Insert: "resides or in the district court in the county in which
this arrest was made"

7. Page 4, line 16.

Following: "upon"

Strike: "the public highways"

Insert: "ways of this state open to the public"

AND AS AMENDED
BE CONCURRED IN

	Date: 3/22 No: SB 391 Be Concurred In As Am.	Date: 3/22 No: SB 2 Be Concurred red In	Date: 3/22 No: SB 313 Be Concurred red In	Date: No:	Date No:	Date: No:
BROWN, Dave	yes	no	no			Date: No:
ADDY, Kelly	yes	yes	yes			
BERGENE, Toni	---	yes	yes			
BROWN, Jan	yes	no	yes			
CURTISS, Aubyn	no	yes	yes			
DAILY, Fritz	no	yes	no			
DARKO, Paula	yes	no	yes			
EUDAILY, Ralph	no	yes	no			
FARRIS, Carol	yes	no	yes			
HANNAH, Tom	no	yes	yes			
IVERSON, Dennis	yes	yes	no			
JENSEN, James	yes	no	no			
KENNERLY, Roland	no	yes	no			
KEYSER, Kerry	no	yes	yes			
RAMIREZ, Jack	no	yes	yes			
SCHYE, Ted	yes	yes	yes			
SEIFERT, Carl	yes	yes	no			
SPAETH, Gary	yes	yes	yes			
VELEBER, Dennis	yes	no	yes			

AMENDMENTS TO SENATE BILL NO. 237 - HALLIGAN

1. Page 1, line 21.
Following: probation officer
Insert: ", restitution officer or other designated person"
2. Page 3, lines 11 and 12.
Strike: "statutory maximum term of confinement that can
be imposed for the offense."
Insert: "period for which the sentence has been suspended
or deferred under 46-18-201."
3. Page 3, line 14.
Following: payment
Strike: "or other restitution,"
4. Page 3, line 16.
Following: pay
Strike: "or perform"
5. Page 3, line 22.
Following: probation officer
Insert: ", restitution officer or other designated person"
6. Page 3, lines 23 and 24.
Following: payment
Strike: "or other performance"
7. Page 4, lines 14 and 15.
Strike: "statutory maximum term of confinement that may
~~be imposed for the offense~~"
Insert: "period for which the sentence has been suspended
or deferred under 46-18-201"

Exhibit B
SB 391
3/22/83

AMENDMENTS TO SENATE BILL NO. 391 -- ECK

1. Page 1, line 13.
Following: 45-7-210,
Insert: "46-18-201,"
2. Page 11, lines 22 through 25.
Insert original language - to read as follows:

" Section 9. "46-18-201. Sentences that may be imposed.
(1) Whenever a person has been found guilty of an offense upon
a verdict or a plea of guilty, the court"
3. Page 12, lines 1 through 3.
Strike: "restitution, repayment of costs of court-appointed
counsel, and repayment of any costs of confinement
under (section 10) and"
4. Page 12, lines 3 through 25. -
Insert original language with amendments** to read as follows:

"may:
 (a) defer imposition of sentence, excepting sentences
for driving under the influence of alcohol or drugs, for a
period not exceeding 1 year for any misdemeanor or for a
period not exceeding 3 years for any felony. The sentencing
judge may impose upon the defendant any reasonable restrictions
or conditions during the period of the deferred imposition.
Such reasonable restrictions or conditions may include:

 (i) jail base release;
 (ii) jail time not exceeding 90 180 days;
 (iii) conditions for probation;
 (iv) restitution
** (v) payment of the costs of confinement
 (vi) payment of a fine as provided in 46-18-231;
 (vii) payment of costs as provided in 46-18-232 and
 46-18-233;
 (viii) community service;
 (ix) any other reasonable conditions considered
 necessary for rehabilitation or for the
 protection of society; or
 (x) any combination of the above.

Exhibit C
SB 194
3/22/83

Proposed amendments to SB 194

1. Page 4, line 12.

Strike: "or jury commissioner"

2. Page 4, line 13.

Strike: "or" through "COURT" on line 14.

3. Page 4, line 22.

Strike: "or" through "COURT" on line 23.

4. Page 5, line 3.

Following: "court"

Strike: "jury commissioner"

Insert: "clerk of the court"

5. Page 5, line 7.

Following: "court"

Strike: "jury commissioner"

Insert: "clerk of the court"

6. Page 5, line 8.

Following: "court"

Strike: "or" through "COURT" on line 9.

SB 260 and HB 540: EXPANSION OF GEOGRAPHICAL APPLICATION OF DUI LAWS.

I. Driving while under the influence of alcohol. 61-8-101. (Minor differences, no conflict).

A. HB 540:

The provisions prohibiting driving under the influence of alcohol apply "upon the ways of the state open to the public."
(Both bills use the same definition of this phrase.)

B. SB 260:

The provisions prohibiting driving under the influence of alcohol apply "upon all ways of this state open to the public."

II. Driving while under the influence of drugs. 61-8-101.

(Conflict).

A. HB 540:

The application of the prohibition against driving under the influence of drugs is limited by amending existing law, "shall apply upon highways and elsewhere throughout the state," (61-8-101 (1)(b)) to "shall apply upon the ways of the state open to the public."

B. SB 260:

The present law on the application of the prohibition against driving under the influence of drugs is unchanged.

III. 61-8-101 (2) (Different, but no conflict).

A. SB 260:

SB 260 adds "or on the ways of this state open to the public" to this subsection's exception from the application of the chapter to operation of vehicles (e.g. agricultural vehicles) directly across "the public roads and highways of this state." Thus driving across a road on a tractor is not considered operating a vehicle on "the public roads and highways of this state" or on "the ways of this state open to the public."

B. HB 540:

HB 540 does not make this addition.

IV. 61-8-401. Prohibition against driving under the influence of alcohol or drugs. (Conflict).

A. Application. (Conflict)

1. HB 540.

In amending 61-8-401, HB 540 limits the application of the prohibition against driving while under the influence of drugs to the "ways of the state open to the public" while under existing law, the prohibition applies "within the state."

2. SB 260.

In amending 61-8-401, SB 260 leaves these provisions unchanged.

B. New prohibition. (different but no conflict).

1. HB 540.

HB 540 adds a new subsection (c) that prohibits driving under the combined influence of alcohol and drugs.

2. SB 260.

SB 260 does not make this addition.

C. Technical differences and substantive additions.

HB 540 makes technical changes related to its creation of the "per se" crime of driving with a blood alcohol concentration of .1 or more as well as some other technical changes that are not in conflict with SB 260.

V. 61-8-403 (Conflict).

A. HB 540:

HB 540 changes the time that may elapse prior to a hearing on a petition to review a suspension from within 30 days of notice to the county attorney to within 10 days of that notice.

B. SB 260:

SB 260 leaves the existing statutory language of 30 days.

VI. 61-8-404.

HB 540 adds to this section, provisions permitting the use as evidence, of a laboratory report as opposed to testimony of a laboratory technician. SB 260 does not make this addition.

Comparison of House and Senate DUI Bills

SB 313 and HB 808: SUSPENSION OF DRIVER'S LICENSE FOR REFUSAL TO
SUBMIT TO CHEMICAL TEST.

I. Geographical Application: (Different but no conflict) HB 808 applies to chemical tests given to drivers on "the ways of the state open to the public." SB 313 applies to chemical tests given to drivers on "the public highways of this state." (If HB 808 or HB 540, which also uses "the ways of the state open to the public," pass, that phrase will be merged in the sections affected by SB 313).

II. 61-8-402: Suspension procedure. (Conflict)

A. HB 808.

1. Officer seizes and suspends license on behalf of division and gives notice of suspension and review procedure and temporary driver's permit valid for 48 hours. Procedure is the same for nonresident drivers except that the officer does not seize the license. (Conflict).

2. Suspension: (Conflict)

- a. 60 days if no refusal within preceding 5 years.
- b. one year if refusal within preceding 5 years.

B. SB 313.

1. Officer seizes license and sends to division (but officer does not suspend on behalf of division) and issues a 72 hour temporary driving permit. Procedure is the same for nonresidents except that there is no provision excepting them from the seizure rule. (Conflict)

2. Suspension: (Conflict)

a. 90 days if first refusal; no probationary license.

b. 6 months if second refusal within 5 years; no probationary license.

III. 61-8-403: Review of suspension. (Some conflict)

A. HB 808.

1. Court. Petition for review may be filed in district court of county of driver's residence or in district court of county where arrest was made. (Different but no conflict)

2. Time. Hearing must be set upon 30 days notice to county attorney. (Conflict)

B. SB 313.

1. Court. Petition for review may be filed in district court of county of driver's residence only. (Different but no conflict)

2. Time. Hearing must be set upon 10 days written notice to the county attorney. (Conflict)