MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 4, 1983

The twenty-second meeting of the Senate Judiciary Committee was called to order by Vice-Chairman Bruce D. Crippen on February 4, 1983 at 10:07 a.m. in Room 415, State Capitol.

ROLL CALL: All members were present, except for Chairman Turnage and Senators Halligan and Brown, who arrived later.

CONSIDERATION OF SENATE BILL 328: Senator Towe, sponsor of this bill, advised that it was being requested by the clinical psychologists of the state. SB328 will allow clinical psychologists to examine, make reports regarding, and to testify as to the mental state of persons charged or convicted of crimes. This bill will merely add clinical psychologists to perform the functions which only psychiatrists now handle.

PROPONENTS: Dr. Mark Mozer, representing the Montana Psychological Association, advised that this bill will allow competition. It was his opinion that clinical psychologists are just as qualified as psychiatrists to perform the aforementioned duties with criminal proceedings. He did advise that he could see one change needed in the bill as drafted. He suggested that the word "licensed" should be included when referring to the clinical psychologist.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Daniels inquired what the differences in training requirement were between a psychiatrist and clinical psychologist. Dr. Mark Mozer advised him of the academic work and other qualifications which both positions require. The major difference in responsibilities he pointed out is that a psychiatrist can prescribe medication, where a clinical psychologist cannot.

Senator Towe closed by saying he would have no objection to the addition of the word "licensed" and that the psychiatrists were aware of the bill and had no objection to it. He also submitted a letter from the Montana Psychological Association to be included in the Minutes (Exhibit "A").

CONSIDERATION OF SENATE BILL 326: Senator Blaylock, sponsor, advised that this bill will allow for the constitution to be amended to allow a Judicial Standard's Commission to resume discipline of justices or judges in violation of judicial ethics, as they had previously had the authority to do before the Shea decision. He quickly commented on the need for the Judicial Standard's Commission to have investigatory powers to review ethics violations and introduced Jean Anderson to explain the need for this bill further.

PROPONENTS: Jean R. Anderson, a member of the Judicial Standards Commission, distributed a report of the Commission (Exhibit "B"). She advised that the purpose of the Commission is not to "get" judges but to insure there is no misconduct. She went on to address the issue of whether complaints should be verified or unverified and it was her opinion that complaints could best be handled in verification form. The Committee was then informed that Steve Brown was present to answer any technical questions.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Chairman Turnage stated it was his opinion that the authority of the Commission to remove a judge for "willful misconduct" gave the Commission power to act on violations of the judicial canons of ethics. Steve Brown advised that the Supreme Court is considering updating the canons. Discussion continued as to the need to "legislate in the constitution" and the problems unverified complaints could cause.

Senator Blaylock closed by saying a Judicial Standards Commission will give people a place to go with their complaints.

There being no further discussion, the hearing was closed.

CONSIDERATION OF SENATE BILL 313: Senator Halligan, sponsor, advised that SB313 is part of a three-part package of bills requsted by the Attorney General, which would hopefully discourage drinking and driving. The bill covers three major areas: (1) it will increase the penalty for refusing to submit to a chemical test, (2) allow the arresting officer to revoke a license by immediately seizing it, and (3) will shorten the required period of notice to the county attorney of an appeal of a suspension to 10 days.

PROPONENTS: Sarah Power, an Assistant Attorney General, advised that this bill will encourage people to submit to a chemical test, as implied consent has been a large problem in the state. It is hard to prosecute a D.U.I. without the test and many people would rather have their license suspended temporarily than receive a D.U.I. conviction. She detailed the bill and its effects and urged the Committee to give it a favorable recommendation. Written testimony was also presented for inclusion in these Minutes (Exhibit "C").

Duane Tooley, representing the Department of Motor Vehicles, also urged the passing of this bill.

Frances Alves, Director of the Missoula County Drunk Driver Prevention Program at the Missoula City-County Health Department,

advised the Committee of statistics relating to drunk driving and urged the passing of SB313 as it is a strong and appropriate measure for deterring these drivers. Her written testimony was also submitted for inclusion in these Minutes (Exhibit "D").

Betty Wing, a Missoula Deputy County Attorney, distributed a handout (Exhibit "E") which cited the two important provisions of the bill. It was her opinion that the license suspension upon refusal of the chemical test and immediate seizure of the license would be two significant factors in deterring drunken drivers. She also stated it is important for the attorney prosecuting D.U.I. cases to have a blood alcohol level in order to get a conviction, and felt there would be fewer trials if more people submitted to the chemical test. She closed by stating implementation of this law would speed up the process without attempting to take away due process.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

The Committee questioned how the license would be taken away from the individual and how the issuance of a 72-hour temporary license would be handled. They were advised that the temporary license would not be issued to the accused until he was capable of driving.

ACTION ON ENATE BILL 37: Counsel again explained that the amendments proposed will provide the water judge with the power for judicial review of certain administrative proceedings. Both Judge Lessley's and Jim Moore's suggestions had been taken into consideration when drafting the amendments. The Committee felt Judge Lessley had incorrectly used the words "water division" in his proposals and debated other alternatives so as to give the division the definition Judge Lessley was seeking. Senator Mazurek noted that Judge Lessley's concern over the unconstitutionality of creating a "water court" was a "non-issue" because the Constitution allows the legislature to create courts in addition to the district courts. Senator Galt moved to adopt the amendments proposed. This motion passed unanimously. Senator Galt then moved that SB37 DO PASS AS AMENDED. This motion passed with Senator Berg voting in opposition.

ACTION ON SENATE BILL 23: Counsel advised that the amendments as proposed by Judge Lessley would cause conflicts in the law. Senator Berg moved that the Committee should reconsider the amendments previously adopted on SB23. This motion passed unanimously. Senator Galt then suggested using the phrase "before the water court." The Committee considered other alternatives in language which would designate judges and masters capable of holding hearings and it was determined that Senator Galt's

suggestion would be the most consistent. Senator Galt then moved to adopt the phrase suggested above and this motion passed unanimously. Senator Hazelbaker moved SB23 DO PASS AS AMENDED and this motion passed with Senator Berg voting in opposition and Senator Mazurek expressing concern.

ACTION ON SENATE BILL 41: A copy of the amendments proposed were distributed and discussed. These amendments would require a report of all certificates granted and change the current law to allow the certificate holder to have his certificate forwarded directly to him. Senator Crippen moved to adopt the amendments as proposed. This motion passed unanimously. Senator Shaw moved the bill DO PASS AS AMENDED. This motion also passed unanimously.

FURTHER CONSIDERATION OF SENATE BILL 26: Senator Mazurek reviewed the action the Committee had taken at its previous meeting. There had been a question of judges being required to move from one district to another and it was found that there will not have to be such a requirement. Senator Berg questioned if action had been taken on Section 8. Senator Mazurek moved to amend Section 8 as follows: page 5, line 2, delete "and terminates January 2, 1989."; strike subsection (3) in its entirety and renumber accordingly. This motion passed unanimously. Senator Berg felt the need to amend this section further because of creating new districts. The bill was then referred to counsel for work on effective dates and a "grey" bill incorporating all amendments.

ACTION ON SENATE BILL 93: A "grey" bill was distributed to the Committee. After review, Senator Crippen expressed concern with the intelligence council. The philosophy of the bill was discussed and Senator Daniels felt it was creating more beaurocracy. The Committee decided it would also be a big expense to the state and that perhaps the idea of an intelligence section was appropriate for big states, but not worth the expense to a state like Montana.

Senator Berg moved SB93 DO NOT PASS. This motion carried with Senators Brown, Shaw and Hazelbaker voting in opposition.

ACTION ON SENATE BILL 163: Proposed amendments were distributed and reviewed. These amendments were comprised of all the suggestions given in testimony; however, there was a conflict about the age at which the court should discharge the youth. A letter from Judge Green had been recently received and was read to the Committee (Exhibit "F"). He felt that the statute should be left in its original language which gives the judge a discretion as to when the youth should be released. Senator Shaw moved to adopt the amendments as proposed and to return page 6, lines 3 and 4 to the original statutory language. This motion passed

unanimously. Senator Berg moved that SB168 DO PASS AS AMENDED. This motion also carried unanimously.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 12:03 p.m.

Jean A. Turnage

JEAN A. TURNAGE
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 2-4-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Each day attach to minutes.

DATE 2-4-83

COMMITTEE ON Judiciary BILL NO. SB313, 326 & 328

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
Dr Mark Wagner	Montana Federation of Govn.	✓ 328	

(Please leave prepared statement with Secretary)

EXHIBIT "A"
February 4, 1983

2-1 SB

HONORABLE TOM TOWE,
SENATOR
MONTANA STATE SENATE
CAPITOL STATION
HELENA, MT. 59620

DEAR SENATOR TOWE:

I AM WRITING TO YOU IN MY CAPACITY AS LEGISLATIVE CHAIRPERSON OF THE MONTANA PSYCHOLOGICAL ASSOCIATION. JOHN TAYLOR, THE PRESIDENT OF OUR ORGANIZATION HAS EMPOWERED ME TO WRITE TO YOU IN BEHALF OF OUR ORGANIZATION EXPRESSING OUR SUPPORT OF SENATE BILL 328, WHICH YOU SPONSORED. OUR UNDERSTANDING OF THIS BILL IS THAT IT WOULD ENABLE PSYCHOLOGISTS IN THE STATE TO EVALUATE PERSONS REGARDING THEIR COMPETENCY TO STAND TRIAL.

DR. MARK MUSIER, A HELENA BASED PSYCHOLOGIST, IS PLANNING ON BEING PRESENT AT THE SENATE HEARING THIS FRIDAY TO REPRESENT OUR VIEW OF THE BILL.

IF I CAN BE OF ANY FURTHER ASSISTANCE TO YOU, OR ANY MEMBERS OF YOUR COMMITTEE, IN CLARIFYING ISSUES RELATED TO THIS LEGISLATION, PLEASE DO NOT HESITATE TO CONTACT ME.

SINCERELY,

Stephen C. Wagner Ph.D

STEPHEN C. WAGNER, PH.D.
LEGISLATIVE CHAIRPERSON
MONTANA PSYCHOLOGICAL ASSOCIATION
(PH. [illegible])

EXHIBIT "B"
February 4, 1983

BIENNIAL REPORT OF THE JUDICIAL STANDARDS COMMISSION TO THE 1983 LEGISLATIVE ASSEMBLY

By: A. B. Martin, Chairman

In compliance with Section 3-1-1126, M.C.A., the Judicial Standards Commission renders its report concerning eighteen (18) complaints submitted to the commission for the years 1981 and 1982, and one (1) complaint pending prior to that period.

Also included is a summation of the reported complaints and a paper entitled "Problem Areas of the Commission."

Summary of Biennial Report

Number of Complaints docketed	18
Complaints pending January 1, 1981	1
	19
Number of verified complaints	8
Number of unverified complaints	11
	19
Number of complaints dismissed	16
Number of complaints pending further inquiry or under advisement	3
	19
Number of complaints against Justices of Supreme Court	2
District Judges	11
Justice of Peace or City Court Judges	6
	19
Number of judges against whom more than one complaint filed	2

-00-

Commission Members

Hon. Arthur B. Martin - Miles City, Montana
Hon. Leonard Langen - Glasgow, Montana
Jean R. Anderson - Billings, Montana
Mel Ruder - Columbia Falls, Montana
Victor Valgenti - Missoula, Montana

Star Printing Co. Miles City, Mont.

Problem Areas of the Commission

The Constitution of Montana, Article VII, Section 11, provides that the judicial standards commission shall investigate complaints and make rules implementing the commission's functions. It further provides that upon recommendation of the commission, the Supreme Court may censure, suspend or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

Section 3-1-1106, M.C.A. provides that the commission or any citizen of the state may, upon good cause shown, initiate an investigation of any judicial officer by filing a verified complaint with the commission.

In the case of State ex rel Shea vs the Judicial Standards Commission, 643 P2 210, decided by the Supreme Court, March 18, 1982, it is held that a verified complaint is a prerequisite for initiation of an investigation by the Judicial Standards Commission. The Supreme Court decision is based upon the language of Section 3-1-1106, M.C.A., supra.

A rule adopted by the commission provides that the commission might initiate an investigation on its own motion but Section 3-1-1106, as interpreted by the Court, prohibits this unless the commission first files a verified complaint showing good cause, which it cannot do without making a preliminary investigation. The commission's rule 8(b) is therefore nullified.

The result is that a procedural rule within the

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aware is that the Supreme Court in Shea (supra) held that "conduct prejudicial to the administration of justice that brings the judicial office into disrespect" is not a ground for judicial discipline. The court held that the constitutional ground of "willful misconduct in office" does not embrace the aforesaid standard which had been incorporated in the rules of the commission.

The court's decision removes from the purview of the commission violations of the canons of judicial ethics and off-bench misconduct that unfavorably reflects upon the judiciary. The commission does not take a position with this aspect of the court's decision.

The foregoing report demonstrates that the commission, the legislature and the courts are struggling in an uncharted area of the law. The Montana Commission consists of two district judges, one attorney and two lay persons, serving staggered terms of four years. The commission has no staff to provide expertise or administrative assistance. All background work, administrative and legal, devolves upon the chairman who by rule must be one of the judge members.

When new members come to the board they have no knowledge of the problems peculiar to the commission's functions. For that reason the Montana Commission became a member of The Center for Judicial Conduct Organizations, at an annual membership fee of $1,000.00, [redacted]. This organization was created under sponsorship of the American Judicature Society to provide educational guidance. The Center regularly provides members with information concerning

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constitutional power of the commission to adopt is overthrown by the legislative rule contained in Section 3-1-1106, M.C.A.

There is a question if the legislature actually intended to interfere with commission procedure. This is evidenced by the enactment in 1981 of Section 3-1-1106, M.C.A. providing in substance that the commission report to the legislature the number, nature and disposition of unverified complaints. This section implies that the commission give consideration to unverified complaints. To give that consideration requires some investigation.

The commission is between the proverbial rock and the hard spot. By Section 3-1-1126, M.C.A. the legislature asks for an investigation of unverified complaints but by Section 3-1-1106, M.C.A., it prohibits an investigation of unverified complaints.

There are valid reasons for verification of complaints and that requirement should not be totally abrogated, but consideration should be given to the rules of the commission providing for due process, notice and showing of good cause, the underlying reasons for verification. (See Rules 9 and 10) The commission is a very unique body, possessing a combination of investigative, prosecutorial and adjudicative functions. To separate these functions, rules must be carefully framed to insure due process. Ignoring the rules or interference with their application exacerbates the tasks assigned the commission.

Another matter of which the legislature should be

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the work of other states in the area of judicial discipline.

One valuable service of the Center is national and regional seminars. I consider it important that the State of Montana afford the members of the commission the opportunity to attend some of these seminars without cost to the members. Commission members serve without compensation but are reimbursed for expenses on a per diem rate fixed by law, which from my experience falls considerably short of actual expenses. Reimbursement of actual expenses would be an encouragement for members to attend.

Respectfully submitted,

A. B. MARTIN, Chairman
Judicial Standards Commission

Star Printing Co. Miles City, Mont.

EXHIBIT "C"
February 4, 1983

Testimony of Sarah Power,
Assistant Attorney General,
re: SB 313

SB 313 proposes three changes to the implied consent law: 1) increases the penalty for refusal to submit to a chemical test; 2) allows for pickup of the license and notice of suspension to handled by the arresting officer; 3) shortens the required period of notice to the county attorney of a hearing to challenge the suspension. The amendments are intended to encourage people to submit to a chemical test and to eliminate some of the administrative problems which arise once refusal occurs. The bill does not create a brand new system but simply amends the present one to allow for a stronger, more efficient procedure to be implemented.

The implied consent problem is no small one; in 1982, there were 1385 implied consent suspensions, up from the 1981 total of 960 suspensions.

Presently an individual who refuses a chemical test loses his driving privileges for 60 days. No restricted probationary licenses are given for the entire period. The length of the suspension is the same whether the refusal is the driver's first or his fifteenth. As you are all aware it is difficult to prosecute many DUI

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2

cases without chemical test results. The public is aware of this problem and often drivers would rather undergo a 60 day implied consent suspension than face the more severe penalties imposed by a DUI conviction.

The proposed amendment to subsection (5) of section 61-8-402, MCA, sets up a two tiered penalty provision. A person's first refusal would result in a six month license suspension with no provision for a restricted probationary license. On a second or subsequent refusal within five (5) years the penalty escalates to a one (1) year revocation with a restricted probationary license available after serving six months of the revocation. The Department believes that by increasing the penalty substantially an individual will be less likely to refuse to submit to a chemical test.

The second amendment would eliminate some administrative problems which arise once refusal occurs. When a person refuses a test the arresting officer must forward to the division a sworn report documenting the refusal. Upon receipt of the report the division notifies the driver of the 60 day suspension and requests the individual to surrender the license to the division. In approximately 60% of the cases the license is not surrendered upon written demand and it is necessary to issue a "pickup" order for it. The order directs a member of the Highway Patrol to track down the driver and confiscate his license. The process is time

consuming and takes away already scarce patrolmen from their regular duties. The amendment found in subsection (4) of section 61-8-402, MCA, eliminates the middleman. The arresting officer confiscates the license himself and delivers to the driver the written notice of suspension. A sworn report will still be forwarded to the division for its records but the license would now accompany it.

The final amendment is to section 61-8-403, MCA. A person who is suspended under the "implied consent" law has the right to appeal his suspension to district court. Currently the driver must give 30 days written notice to the county attorney of the hearing date. Because the suspension will be immediate under the above amendments it is necessary to rework the statute to protect the due process rights of the affected driver. For this reason a 72-hour temporary driving permit is given the driver when his license is confiscated by the arresting officer. This allows the individual sufficient time to get into court and request a stay order to protect his driving privileges while he challenges his suspension. In addition, the time period for notice to the county attorney of any hearing on the suspension is reduced from 30 days to 10 days. The due process considerations involved in implied consent statutes were discussed by the U.S. Supreme Court in the case of Mackey v. Montrym, 443 U.S. 1 (1979). In that case, the

U.S. Supreme Court upheld a Massachusetts statute mandating summary suspension of a drivers' license for refusal to submit to a chemical test but made it clear that the availability of a prompt postsuspension hearing was a crucial factor in evaluating any similar statute on due process grounds. The temporary driving permit provides an individual with the opportunity to seek court review if he desires. The individual would not be denied due process in seeking that review. In the same way the 10 day notice period allows the individual to expedite his review.

In summary, the proposed amendments to SB 313 are intended to eliminate the refusal to submit to a chemical test as an attractive alternative to those individuals arrested for drunken driving and to increase the administrative efficiency of the suspension process.

SB 313 is a crucial piece of legislation not only for the changes in the implied consent law it proposes but for the role the changes will play in the State's fight against drinking and driving. Currently there are three major pieces of legislation proposed by the Department of Justice in the drunk driving area. SB 313 is the key to the entire package. The other two bills set up stringent standards and tougher penalties for DUI. Without a similar increase in the implied consent area, more and more individuals will refuse the test in an attempt to avoid the stiffer criminal and

administrative penalties which accompany DUI charges. That occurrence would nullify the entire war currently being waged on drinking and driving. For these reasons I would urge passage of SB 313.

EXHIBIT "D"
February 4, 1983

I am Frances D. Alves, M.P.H., Director of the Missoula County Drunk Driver Prevention Program at the Missoula City-County Health Department. I represent a 30-member task force of many disciplines and organizations concerned about drunk driving. We strongly support Senate Bill 313.

It is well known that 50% of the 50,000 automobile fatalities (25,000) occurring in this country each year are alcohol related.[1] (In Montana, 60-65% of all drivers killed in traffic accidents had been drinking.[2]) Additionally, 25% of U. S. non-fatal crashes are alcohol related, and drunk drivers are associated with 750,000 injuries per year. Drunk driving then is a serious public health problem. It is the number one killer of Americans under age 40 and a very significant cause of death for those over 40.[3]

Immediate suspension or revokation of a driver's license upon refusal to submit to a chemical test to determine blood alcohol concentration (BAC) is a strong and appropriate measure to reduce the significant public health problem of drunk driving. Nationally, problem drinkers constitute two thirds of DUI arrests.[4] This far exceeds the percentage of the driving population they constitute: about 13%.[5] These people need treatment for problem drinking. Alcohol treatment programs are almost unanimous in operating on the premise that a first step in such treatment is for problem drinkers to suffer the full and natural consequences of their actions. Having a driver's license immediately suspended or revoked for refusing a chemical test to determine BAC is and should be a consequence of driving drunk.

This action protects the public health in two ways. It prevents drunk drivers from driving and threatening the lives and health of the public. And it strongly encourages problem drinkers to be moved toward treatment when they

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can not be shielded from the consequences of their drinking and driving.

Reluctance to take this strong action because of a general feeling of "There but for the grace of God go I" is simply unfounded. In Montana, the average BAC of persons arrested for DUI is 0.18%. (Montana Department of Highway Information.) Legal intoxication is 0.10% or greater. And a BAC of 0.15% strongly indicates a tolerance of a problem drinker. Most DUI arrests, then, involve people with drinking problems who have drunk far in excess of one to two social drinks.

If penalties for refusing a chemical test for DUI are equal (and not less severe) than penalties for DUI conviction, i.e. six months, the DUI suspect is more likely to submit to that test. This again sets in motion the process previously described of moving problem drinkers to treatment and protecting the public health from the hazards of drunk driving. And - it will be a strong message to the public and individual drivers that drunk driving will not be tolerated in Montana.

The Missoula County Task Force on the Prevention of Drunk Driving strongly supports the passage of Senate Bill 313.

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

ROBERT L. DESCHAMPS III
COUNTY ATTORNEY

EXHIBIT "E"
February 4, 1983

Betty Wing
Deputy County Attorney, Missoula County

Proponent of Senate Bill 313

Senate Bill 313 is the key provision in a package of DUI bills. The other bills provide penalties for driving with an alcohol concentration of .10 or more. (House Bill 540 provides criminal penalties and a bill yet to be introduced provides administrative penalties.) These bills will only serve their purpose if the driver submits to a chemical test of his blood, breath or urine to determine the alcohol concentration.

Senate Bill 313 is designed to induce the driver to take a chemical test, usually the breathalyzer test. This is very important in conjunction with the package of bills or standing alone.

The bill has two important provisions:

1. The driver's license will be suspended for 6 months upon refusal of the breathalyzer

Currently the suspension is for 60 days. The 6 month suspension will be a greater incentive to take the test.

The results of a breathalyzer or blood test are valuable evidence in a DUI prosecution. It is hard, scientific evidence to present to a judge or jury. It is even more valuable in avoiding a trial altogether. It has been my experience that

1. Alcohol Health and Research World, Volume 7, Number 1. Fall 1982.

2. "A Driver's Guide to Drinking", Montana Highway Traffic Safety Division. Undated

3. "A Manual for Managing Community Alcohol Safety Education Campaigns", National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation. November 1982

4. "Alcohol and Traffic Safety", NHTSA. 1981

5. Daniel Sinawski, Colorado Department of Highways: DUI Training School, Missoula Montana, 1982

Frances D. Alves, M.P.H.
Missoula City-County Health Dept
721-5700, ext. 398

FOURTH JUDICIAL DISTRICT
MISSOULA, RAVALLI, SANDERS,
MINERAL AND LAKE

EDWARD M. WONTOR
[redacted]
COURT REPORTER

Jack L. Green
JUDGE OF THE DISTRICT COURT
COUNTY COURTHOUSE
MISSOULA, MONTANA 59801

EXHIBIT "F"
February 4, 1983

February 1, 1983

Senator Jean A. Turnage
Chairman
Senate Judiciary Committee
State Capitol
Helena, Montana 59601

Dear Jean,

I am concerned about an admendment needed in S.B. 169. Page 6, Lines 3 and 4 of this Bill if left intact would allow the Department of Institutions to retain authority and discharge a youth at will without any say by the Youth Court Judge regarding the release of a youth back to the community.

There have been numerous incidents in which the Department of Institutions have attempted to release a serious or violent offender back into the community within a few months of placement at the Institution. At this time, the Judge has the discretion to keep the youth at the Institution for whatever time he feels is necessary to protect the community as well as have the Institution provide treatment to the youth. It is important that the Judge retain this authority.

I therefore recommend that the wording on Page 6, Lines 3 and 4 be returned to its original language. Thank you for your consideration of this Bill.

Sincerely,

Jack L. Green
District Court Judge

JLG/dlm

when a defense attorney finds there are results of chemical test available showing the defendant is above a .10, a guilty plea usually follows. I would estimate the average alcohol concentration of drivers arrested in Missoula County is between .18 and .20, sufficiently high to show unquestionable intoxication.

2. <u>The arresting officer has authority to seize the license immediately</u>

Currently if a driver refuses the breath test, the officer notifies the Division of Motor Vehicles by mail. The notice is processed in Helena then sent to the local highway patrol. The patrol finds the driver as time permits and confiscates his license. Half the suspension period may be past before the driver loses his license. Immediate seizure is more effective.

The threat of seizing the license is supposed to convince the driver to take the test. The choice becomes more real and more threatening when the officer physically takes the license from the driver.

I ask for your help in convicting drunk drivers. I ask for your support of SB 313.

Kalispell Area Chamber of Commerce Post Office Box 978 Kalispell, Montana 59901 Telephone (406) 755-6166

February 9, 1983

Senator Jean Turnage
Chairman, Senate Judiciary Committee
Montana Legislature
State Capitol
Helena, Montana 59601

Dear Senator Turnage:

The Board of Directors of the Kalispell Area Chamber of Commerce wishes to advise you and the Committee of its opposition to Senate Bill 313.

Allowing an arresting officer to sit in a judicial capacity to suspend or revoke a license properly issued without appropriate hearing or due process is completely inconsistent with our constitutional process.

We request the Committee's opposition to Senate Bill 313 and request further that this letter be made part of the Committee records relative to Senate Bill 313.

Very truly yours

KALISPELL AREA CHAMBER OF COMMERCE

By _____
President

By _____
Chairman, Legislative Affairs

STANDING COMMITTEE REPORT

February 4, 1983

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 23

Hager

Respectfully report as follows: That Senate Bill No. 23

introduced bill, be amended as follows:

Page 1, line 15.
Following: "thereon"
Strike: ~~"before the water judge"~~
Insert: "before the water court"

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

41.C.

STANDING COMMITTEE REPORT

February 4,

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 37

Hager

Respectfully report as follows: That Senate Bill No. 37

introduced bill, be amended as follows:

1. Title, line 8.
   Following: "BY"
   Insert: "THE WATER JUDGE OF"

2. Title, line 9.
   Following: "DIVISION;"
   Insert: "PROVIDING FOR THE LOCATION OF HEARINGS UPON JUDICIAL REVIEW;"

3. Page 3, line 9.
   Following: "review."
   Insert: "(1)"

4. Page 3, line 12.
   Strike: "(1)"

And, as so amended,

(continued on page 2)

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

4. Insert: "(a)"

5. Page 3, line 15.
Strike: "(2)"
Insert: "(b)"

6. Page 3, line 17.
Following: "by the"
Insert: "water judge of the"

7. Page 3.
Following: line 18.
Insert: "(2) Any hearing held upon judicial review pursuant to this section shall be held in the county of the place of beneficial use of the water applied for."

And, as s amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 4, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 41

Hager

Respectfully report as follows: That Senate Bill No. 41

introduced bill, be amended as follows:

1. Title, lines 4 through 8.
   Following: "AN ACT"
   Strike: the remainder of line 4 and the rest of the title in its entirety.
   Insert: "REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO COMPILE REPORTS OF ALL CERTIFICATES OF WATER RIGHTS ISSUED BY THE DEPARTMENT; REQUIRING THAT COPIES OF FINAL WATER RIGHTS DECREES AND COPIES OF THE REPORTS BE SENT TO THE COUNTY CLERK AND RECORDER OF ALL COUNTIES; AMENDING SECTION 85-2-236, MCA."

2. Page 1, line 11.
   Strike: Section 1 in its entirety.
   Renumber: subsequent sections.

And, as so amended,

(continued on page 2)

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

pl.

February 4, 19 83

3. Page 2, lines 10 and 11.
Following: "existing right."
Strike: the remainder of line 10 and 11 through "certificate."

4. Page 2, lines 13 and 14.
Following: "decreed."
Strike: the remainder of line 13 and line 14 through "decree to the"
Insert: "The department shall compile quarterly and annual reports showing all certificates of water rights issued by the department during the time covered by the report. The reports must show the total number of certificates issued for each water division, the date of the certificate, the name and address of the person to whom the certificate is issued, the amount of water to be appropriated, the purpose of the appropriation and such other facts or matters as the department feels are appropriate. The department shall send a copy of each final decree and copies of the reports to the clerk and recorder of each county in the state. The clerk shall deposit the decree and reports in a storage vault and make them available for public inspection during the regular office hours. The"

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 4, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 168

VanValkenburg

Senate Bill No. 168

Respectfully report as follows: That

introduced bill, be amended as follows:

1. Page 1, line 25.
   Following: "months"
   Insert: ", which period may be extended for 6 months upon further order of the court after notice and hearing"

2. Page 2, line 16.
   Strike: "by his aftercare counselor"

3. Page 5, lines 5 through 9.
   Strike: lines 5 through 9 in their entirety.
   Following: "hearing."
   Insert: "Any order of the court may be modified at any time. In the case of a youth committed to the department of institutions, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing."

And, as so amended,

(continued on page 2)

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

JC.

4. Page 6, line 3.
Following: "until"
Strike: "~~age~~ age 21 or discharge by the department, whichever occurs first."

And, as so amended,

DO PASS

Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 4, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 93

VanValkenburg

Respectfully report as follows: That Senate Bill No. 93

introduced bill,

~~XXXXX~~
~~DO PASS~~
DO NOT PASS

Jean A. Turnage

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.