

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 9, 1983

The twenty-fourth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on February 9, 1983 at 10:05 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 350: Representative Hammond advised that he was sponsoring this bill at the request of the Board of Pardons. HB350 would provide the Board a two month time period in which to investigate a prisoner's parole eligibility prior to his eligibility date.

PROPOSERS: Curt Chisholm, representing the Department of Institutions, supported this bill as it would clarify the law as to how long the Board has to review a parole plan prior to a prisoner's eligibility date.

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

CONSIDERATION OF SENATE BILL 351: Senator Halligan informed the Committee that he was sponsoring this bill at the request of the Department of Justice. SB351 provides that testimony of psychiatrists and other mental health professionals will be limited at criminal proceedings.

PROPOSERS: John Maynard, Assistant Attorney General, advised that this bill relates to the insanity defense and explained the effects that psychiatrists' testimony has on a criminal proceeding. Their expertise becomes a matter of opinion when applied in the setting of a criminal proceeding. An article entitled "Psychiatrists Oppose Sanity Testimony" was then distributed (Exhibit "A"). John Maynard advised that this bill will not effect the ability to call a psychiatrist to testify; however, it would preclude them from offering their opinion as to the defendant's state of mind during the commission of the offense. The defendant's state would be left to the jury to decide. John Maynard's essential concern was that a defendant could manipulate a psychiatrist into believing he is mentally ill.

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

Senator Mazurek wondered how a jury could draw conclusions if they do not have adequate testimony from a psychiatrist. John Maynard stated that proper conclusions could not be drawn based on the tests a psychiatrist administers and upon the actions and statements of the offender. A jury must make its determinations from common sense and using the guidance of the instructions the court gives them. Psychiatrists' testimony is subjective and not based on scientific facts. Senators Mazurek and Turnage questioned what the definition of a mental health professional is. Curt Chisholm advised that those people who work under the mental health system and who are certified by the Department of Institutions are defined as mental health professionals under Chapter 21, Title 53 of the Mental Health Act.

There being no further questions, the hearing was closed.

CONSIDERATION OF HOUSE BILL 327: Representative Bergene, sponsor, advised that this bill is being introduced as a result of the national effort to deter shoplifting. She cited statistics of the losses and advised that shoplifting is the most expensive crime in the United States.

PROPOSERS: George Allen, representing the Montana Retail Association, emphasized the need for this legislation and advised that the Supreme Court has found the existing shoplifting law to be unconstitutional. The Retail Association requested their attorneys to draft a bill which could adequately cover the rights and restrictions on a merchant detaining a suspected shoplifter.

Joe O'Toole of the Missoula Area Chamber of Commerce, advised that the Chamber supports the concept of this bill.

Blake Wordal, representing the Montana Hardware and Implement Association, also supports the need for this legislation.

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

Chairman Turnage questioned why the search of a person in the presence of a law enforcement officer wording was taken out of the original law. He was advised that the attorneys, when drafting the bill, felt it wasn't necessary. Chairman Turnage expressed concern and felt this should be reinserted so as to protect the accused. The proponents had no objection to this suggestion.

Representative Bergene closed by stating there is an urgent need for the passage of this bill and expressed her feelings that it provides for a reasonable amount of time for detaining a suspect.

ACTION ON HOUSE BILL 350: The Chairman announced that the Committee was now ready to consider executive action on HB350. Senator Mazurek moved HB350 BE CONCURRED IN. This motion carried unanimously.

ACTION ON SENATE BILL 138: Proposed amendments were distributed and reviewed by the Committee. Page 120 was discussed and the Committee decided Section 68 should be stricken in its entirety as it was a non-uniform amendment. Senator Mazurek moved to amend the bill as above proposed. This motion passed unanimously.

The second set of amendments deleting fees set by administrative rule was then discussed. The amendments would set the existing fee in the statute. The Committee also reviewed the need to amend the code reference. It was the consensus of the Committee that the amendments as proposed were properly prepared. Senator Mazurek moved their adoption (See Exhibit "B"). This motion passed unanimously. Senator Mazurek then moved SB138 DO PASS AS AMENDED. This motion also passed unanimously.

CONSIDERATION OF HOUSE BILL 307: Representative Brand advised that he is sponsoring this bill at the request of the Department of Institutions in order to make participation in a riot in a county jail or the state prison a crime and to enable a penalty to be imposed on an offender. This law is designed to be a deterrent and to make prisons safer. There would be no fiscal impact and its passage could potentially save money if damage to property through riots is avoided.

PROPOSERS: Curt Chisholm, representing the Department of Institutions, supported this bill as it would give the state leverage over individuals and those who conspire to riot.

Hank Risley, Warden of Montana State Prison, advised that this legislation was initiated at his request. He feels it would be helpful to the prison if prisoners were held accountable for their behavior. HB307 would give them the authority to hold people involved in riots accountable for their disruptive behavior.

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

Senator Crippen advised that he could see the need for this at the Montana State Prison, but failed to see the need in city and county jails. He felt it could be an injustice to those people being held in city and county jails on misdemeanor charges, to be subjected to the addition of a felony charge if a riot situation arose. Chairman Turnage questioned if those prisoners who didn't want to engage in the riot activity, but were forced to, would be held accountable. Mr. Risley advised that discretion is always used and that the primary instigators were the prisoners who were usually held responsible. Chairman Turnage suggested amending page 1, subsection (3), line 23 to insert "by engaging in an act of violence" before "follows." This would eliminate any question of prisoners being held accountable for only a threat and allow action to be taken for the actual act. Mr. Risley felt this suggestion was acceptable.

Senator Mazurek suggested that the bill provide for an immediate effective date.

Chuck O'Reilly, Sheriff of Lewis and Clark County, arrived late but wished to voice his support for this bill. He felt it should apply to city and county jails so as to provide more leverage over the prisoners. Currently, the only leverage they have is taking T.V. privileges away from the prisoners. He then briefly addressed the concerns of the Committee and strongly advised a mandatory provision, as he felt it is essential to have some "hold" over the prisoners.

Senator Halligan moved to amend the bill as follows:

Page 1, line 23.

Following: "riot"

Insert: "by engaging in an act of violence"

This motion passed unanimously.

Senator Mazurek moved to amend page 1, line 25 and page 2, line 16 to strike "subject to imprisonment" and to replace it with "shall be imprisoned" in order to be more consistent with the other sentencing provisions. This motion passed unanimously.

Senator Shaw felt the bill should provide for an immediate effective date upon its passage and approval. He made a motion to this effect which passed unanimously.

Senator Berg expressed concern with the mandatory requirement. He suggested deferring consideration until a later time.

There being no further discussion, the hearing was closed.

ACTION ON SENATE BILL 237: A "grey" bill was distributed and reviewed. Under the proposed amendments, a judge would have authority to impose restitution, but would not be required to do so. A definition is given to the word "victim" which is consistent with a recent supreme court interpretation. Also, all ambiguous language and the organization liability has been stricken. Senator Halligan discovered that the title should also be amended to refer to an offender rather than a perpetrator. Senator Daniels questioned if the bill provides for recovery of stolen property and was assured that it does. Senator Crippen was concerned about page 6, line 7 and the possibility that any assets of the defendant's may be subject to confiscation. Senator Halligan expressed the need for this provision in order to assure the defendant makes his restitution payments.

The Committee expressed concern about the method of collecting a judgment and thought that everything after "judgments" in line 8, page 5 should be stricken. Senator Halligan moved to amend page 6, line 7 of the "grey" bill to strike the remainder of the line after the word "judgments". This motion passed unanimously. Senator Halligan then moved to adopt the amendments as set out in the grey bill and to include the amendments passed as aforementioned. This motion passed unanimously. Senator Halligan moved SB237 DO PASS AS AMENDED. This motion also passed unanimously.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:45 a.m.



JEAN A. TURNAGE
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 2-9-83

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)	✓		

2-9-83

Judiciary

SB 351

HBs 307, 327 + 35,

NAME _____

REPRESENTING

BILL #

Check One

Support	Oppose
<p>1. <input type="checkbox"/> I support the proposed changes to the law.</p> <p>2. <input type="checkbox"/> I oppose the proposed changes to the law.</p>	<p>3. <input type="checkbox"/> I support the proposed changes to the law.</p> <p>4. <input type="checkbox"/> I oppose the proposed changes to the law.</p>

Oppo

Henry Birley
Blackburn

3rd State Pyro
THE HARDWARE and
IMPLEMENT \$5500

307

✓

Clark O'Reilly

Int Sheriff & Peace Officers Assn

307

✓

Bill Ware

Chas L. Polie Assn

307

✓

John Maynard

Attorney General

SB35

✓

CURT CHISOLD

INSTITUTIONS

5

✓

11

11

45

307

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EXHIBIT "A"

February 9, 1983

Psychiatrists oppose sanity testimony

WASHINGTON (AP) — Reacting to the uproar after John Hinckley's acquittal on ground of insanity, the American Psychiatric Association said Wednesday that courts should stop asking psychiatrists to testify whether a defendant was sane or insane, responsible or not responsible.

It also recommended that when psychiatry can do no more for people found innocent by reason of insanity — people who might be dangerous still — they "should be transferred to the most appropriate non-hospital facility," rather than being put back on the street.

Conflicting testimony on sane-insane, responsible-not-responsible questions dominated the trial of Hinckley, who did not deny that he shot and wounded President Reagan and three other men on March 30, 1981.

Many people were shocked at the Hinckley verdict. There were calls for abolishing the insanity defense and the APA decided to study the issue. Its statement did not address Hinckley's trial or treatment.

"Insanity is a legal and not a medical concept; responsibility is a moral and not a medical concept," said Dr. Loren Roth, professor of psychiatry at the University of Pittsburgh, in discussing APA-proposed guidelines on how to deal with issues that were raised.

In general, the association said, society asks the science of psychiatry to do too much in determining whether a defendant was responsible for his act and eventually what his fate should be, if he was not.

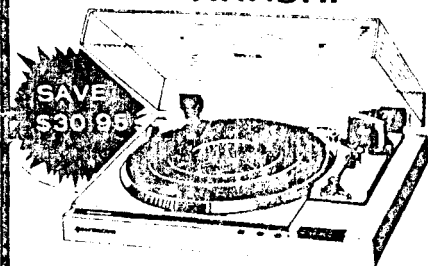
After the jury acquitted Hinckley, U.S. District Judge Barrington D. Parker ordered him confined at St. Elizabeths Hospital, a federal mental institution in the District of Columbia. Hinckley has the right to go before the judge every six months for a determination on whether he must remain in the hospital or may go free.

The APA called for changes in such a procedure. It said a board representing the public, psychiatry and the law should decide when a person acquitted by reasons of insanity should be allowed back on the street.

The statement, drawn by a four-member committee headed by Roth and endorsed by 75 experts on the insanity defense, will serve as the basis for advising Congress and state legislative bodies seeking to modify their laws.

SALE \$179.99

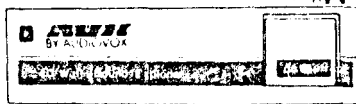
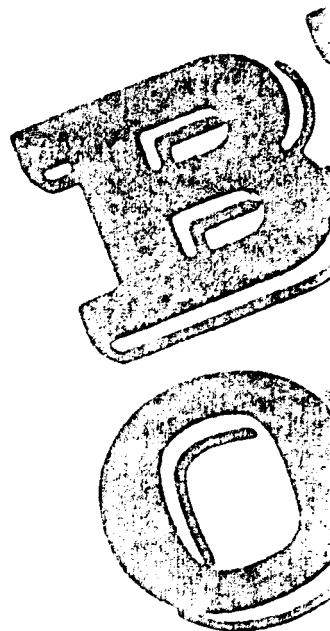
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HITACHI HT-45 Sleek, slim-line design in direct drive turntable. *Retail \$135.95

SALE \$109

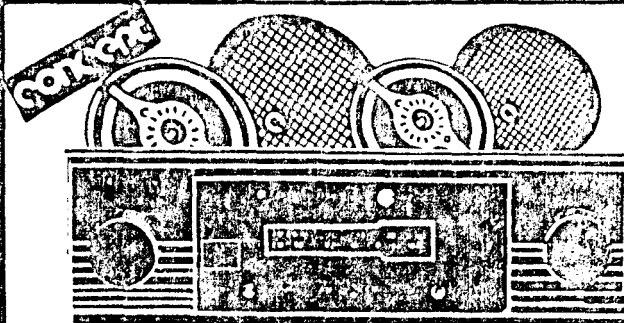
MONTANA
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AUDIOVOX AMP-500 For a burst of power try a 40 watt stereo power amplifier. *Retail \$39.93

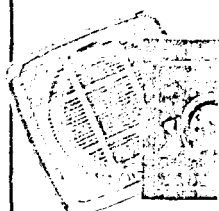
SALE \$24.95

Prices Expire January 26th



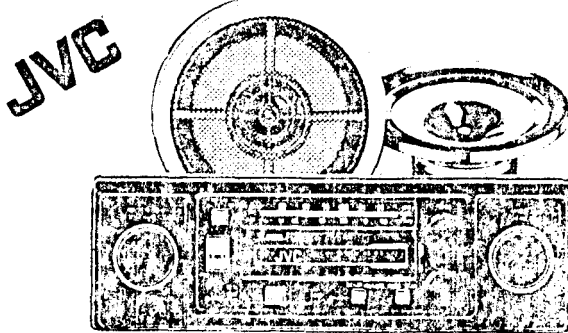
CONCEPT RX-3000/CS - 5412 A great sounding system from Concept. An AM/FM in-dash cassette and matching 5 1/4" 2-way speakers. *Retail \$159.90

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PIONEER KP-2 Jensen 1069 cc 5 1/4" thin mor

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JVC KS-R3 In-dash AM/FM stereo cassette receiver with JVC CS-61 6 1/2" speakers. *Retail \$339.90

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BOSE 1401 S environmental direct reflect for each spec

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OUTRAGEOUS SPECIALS

go free.

The APA called for changes in such a procedure. It said a board representing the public, psychiatry and the law should decide when a person acquitted by reasons of insanity should be allowed back on the street.

The statement, drawn by a four-member committee headed by Roth and endorsed by 75 experts on the insanity defense, will serve as the basis for advising Congress and state legislative bodies seeking to modify their laws.

"The public looks to us as does the law," Roth told a news conference. "Unfortunately, up until now we have been asked the wrong questions by the law and then when we have given answers, we have been kicked."

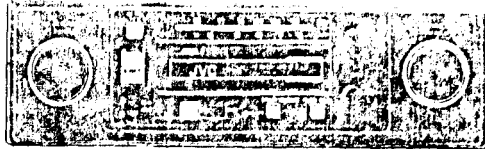
When courts ask psychiatrists to pass judgment on whether defendants are sane or insane or responsible for their crime the results are contradictions in testimony that only confuse the jury, the APA said.

"These are not psychiatric questions," Roth said. "There are no experts in criminal insanity save the jury."

Nevertheless, whether the person who committed a crime was found guilty or was exculpated because he was mentally ill "should not obscure the fact that the public deserves protection from such persons," Roth said.

The 27,500-member APA, whose diagnostic manual of mental disorders was a virtual textbook at the Hinckley trial, said there is no guarantee that a defendant who has finished his hospitalization is no longer dangerous.

"The presumption should therefore be that after initial hospitalization a long period of conditional release with careful supervision and outpatient treatment will be necessary to protect the public and to complete the appropriate treatment programs," it said.



JVC KS-R3 In-dash AM/FM stereo
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6 1/2" speakers. *Retail \$339.90

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OUTRAGEOUS SPECIALS

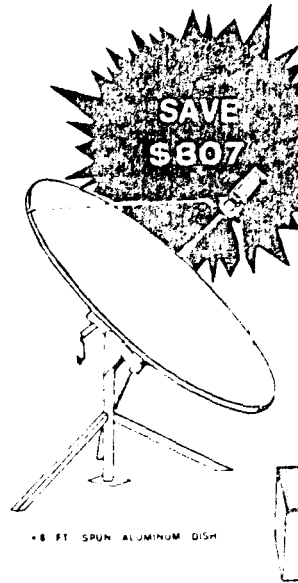
**NOT ALL
ITEMS AVAILABLE
IN ALL STORES**

**ALL
PURCHASES
FINAL**

FACTORY CLOSEOUTS

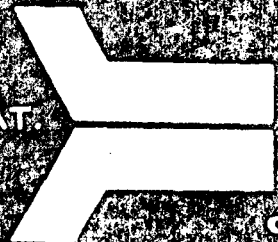
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WARRANTIES**

**SERVICE AVAILABLE
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The Greatest

**HOURS
9 to 6
MON. THRU SAT.
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SUNDAY**



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Great Falls

"A"
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Page 120, line 3.

strike section 68 in its entirety
renumber subsequent section

AMENDMENTS TO SB 138

1. Page 120, line 7.
Following: "operations" *strike § 68 & renumber*
Insert: "other than a person buying farm products from a person engaged in farming operations"
2. Page 143, line 14.
Following: "filing"
Strike: remainder of line 14 through "include" on line 15
Insert: "shall be the following"
3. Page 143, line 17.
Following: "form"
Insert: " -- \$2"
4. Page 143, line 18.
Following: "form"
Insert: " -- \$2"
5. Page 143, line 20.
Following: "form"
Insert: " -- \$2"
6. Page 143, line 22.
Following: "form"
Insert: " -- \$2"
7. Page 143, line 25.
Following: "form"
Insert: " -- \$3"
8. Page 144, line 2.
Following: "form"
Insert: " -- an additional \$2"
9. Page 144, line 3.
Following: "indexed"
Insert: " -- \$2"
10. Page 144, line 5.
Following: "fee"
Insert: "of \$2 for"
11. Page 144.
Following: line 6
Insert: "(i) any of the filing and indexing in subsections (a), (b) or (d) where the collateral is equipment or rolling stock of railroads or street railways, -- \$15"
12. Page 145, lines ~~2 through 9~~.
Strike: subsection (8) in its entirety

"B"
2-9-83

13. Page 147, line 19.
Following: "30-9-403"
Strike: "(8)"
14. Page 148, line 13.
Following: "30-9-403"
Strike: "(8)"
15. Page 149, line 24.
Following: "30-9-403"
Strike: "(8)"
16. Page 151, line 11.
Following: "30-9-403"
Strike: "(8)"
17. Page 152, line 5.
Following: "30-9-403"
Strike: "(8)"

NAME: George Allen DATE: 2-9-83

ADDRESS: Helena Mt.

PHONE: 442-3388

REPRESENTING WHOM? Mont. Retail Assn.

APPEARING ON WHICH PROPOSAL: HB 327

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: BLAKE WORDAL DATE: 2/9/83

ADDRESS: Helena

PHONE: 442-1590

REPRESENTING WHOM? MT HARDWARE & IMPLEMENT ASSOC.

APPEARING ON WHICH PROPOSAL: HB 327

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

February 9,

1983

MR. **PRESIDENT**

We, your committee on **Judiciary**

having had under consideration **House**

Bill No. **350**

Hammond (Mazurek)

Respectfully report as follows: That **House**

Bill No. **350**

(Third Reading)

BE CONCURRED IN

XXXXXX

J/c.

STANDING COMMITTEE REPORT

February 9, 19 83

MR. **PRESIDENT**

We, your committee on **Judiciary**

having had under consideration **Senate** Bill No. **138**

Mazurek

Respectfully report as follows: That **Senate** Bill No. **138**

introduced bill, be amended as follows:

1. Page 120, line 3.
Strike: Section 68 in its entirety.
Renumber: subsequent sections.
2. Page 143, line 14.
Following: "filing"
Strike: remainder of line 14 through "include" on line 15.
Insert: "shall be the following"
3. Page 143, line 17.
Following: "form"
Insert: " -- \$2"
4. Page 143, line 18.
Following: "form"
Insert: " -- \$2"

Continued on Page 2

XXXXXX
DO PAGE

Y/C.

February 9,

83

19

5. Page 143, line 20.
Following: "form"
Insert: " -- \$2"
6. Page 143, line 22.
Following: "form"
Insert: " -- \$2"
7. Page 143, line 25.
Following: "form"
Insert: " -- \$3"
8. Page 144, line 2.
Following: "form"
Insert: " -- an additional \$2"
9. Page 144, line 3.
Following: "indexed"
Insert: " -- \$2"
10. Page 144, line 5.
Following: "fee"
Insert: "of \$2 for"
11. Page 144.
Following: line 6.
Insert: "(1) any of the filing and indexing in subsections (a), (b) or (d) where the collateral is equipment or rolling stock of railroads or street railways, -- \$15"
12. Page 145, line 2.
Strike: subsection (8) in its entirety
13. Page 147, line 19.
Following: "30-9-403"
Strike: "(8)"
14. Page 148, line 13.
Following: "30-9-403"
Strike: "(8)"
15. Page 149, line 24.
Following: "30-9-403"
Strike: "(8)"
16. Page 151, line 11.
Following: "30-9-403"
Strike: "(8)"
17. Page 152, line 5.
Following: "30-9-403"
Strike: "(8)"

And, as so amended, DO PASS

STANDING COMMITTEE REPORT

February 9, 1933

MR. **PRESIDENT**

We, your committee on **Judiciary**

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

Halligan

Respectfully report as follows: That **Senate** Bill No. **237**
introduced bill, be amended as follows:

1. Title, lines 5 and 6.
Strike: "PERPETRATORS OF CRIMES"
Insert: "CRIMINAL OFFENDERS"
2. Page 1, line 10.
Strike: "Sentence"
Insert: "Condition"
3. Page 1, line 11.
Strike: "sentence"
Insert: "require"
4. Page 1, line 12.
Following: "offense."
Strike: remainder of line 12 through "restitution" on line 14.

Continued on Page 2

~~XXIX~~

J.C.

February 9,

83'

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5. Page 1, line 15.
Following: "loss"
Insert: "(1)"
Strike: "Whenever"
Insert: "whenever"
6. Page 1, line 17.
Strike: "sentence"
Insert: "condition"
the victim of the offense"
a deferred or suspended sentence"
7. Page 1, line 18.
Strike: "a"
Insert: "the person"
an officer to include in the"
8. Page 1, line 19.
Following: "re"
Insert: ":",
Strike: the remainder of line 19 and line 20 in its entirety.
9. Page 1.
Following: line
Insert: "(a) determination of the offender's financial resources
and financial ability to pay restitution; and (b) documentation
of the victim's pecuniary loss submitted by the victim.
(2) whether a presentence report is authorized or
requested and the court may receive evidence of the
offender's ability to pay and the victim's loss at
the time of sentencing."
10. Page 1, line 22.
Following: "the"
Insert: "the following definitions apply: (1)"
9),"
11. Page 1, line 23.
Strike: "(1)"
Insert: "(a)"
12. Page 2, line 6.
Strike: "(2)"
Insert: "(b)"
13. Page 2.
Following: line
Insert: "(2)" means:

Continued on Page 3

13. (continued)
 - (a) a person who suffers loss of property, bodily injury, or death as a result of:
 - (i) criminally injurious conduct; or
 - (ii) his good faith effort to prevent criminally injurious conduct.
 - (b) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for his pecuniary loss."
14. Page 2, line 11.
Strike: "or other restitution"
15. Page 2, line 12.
Strike: "or performance"
16. Page 2, line 13.
Strike: "or performance"
17. Page 2, line 21.
Strike: "defendant"
Insert: "offender"
18. Page 3, line 5.
Strike: "or performance"
19. Page 3, lines 11 and 12.
Strike: "or other restitution"
20. Page 3, line 13.
Strike: "or other restitution"
21. Page 3, line 14.
Strike: "or unperformed"
22. Page 3, line 20.
Strike: "for 60 days"
23. Page 3, lines 21 and 22.
Strike: "or a victim"
24. Page 4, line 1.
Following: "hearing or"
Insert: ", if he fails to appear as ordered,"
25. Page 4, line 3.
Following: "hearing"
Strike: the remainder of line 3 through "under" on line 6.
Insert: "as provided in"

Continued on Page 4

26. Page 4, lines 6 and 7.
Strike: "to revoke a suspended or deferred sentence"
27. Page 4, line 8.
Strike: "Unless the offender shows that his"
Insert: "If the court finds that the offender's"
Strike: "not"
28. Page 4, lines 9 and 10.
Strike: "to an intentional refusal to obey an order of the court or"
29. Page 4, lines 11 and 12.
Strike: "or otherwise perform"
Insert: "of"
30. Page 4, line 14.
Following: "ordered,"
Strike: remainder of line 14 through ". The" on line 16.
31. Page 4, line 20.
Strike: subsection (3) in its entirety.
Renumber: subsequent subsections
32. Page 5, line 8.
Strike: "for money rendered in favor of the state"
33. Page 5, line 9.
Strike: "reparation fund"
Insert: "compensation account"
34. Page 5, line 10.
Strike: "by a"
Insert: "from the"
35. Page 5, line 10 and 11.
Strike: "reparation fund"
Insert: "compensation account established in 53-9-109"
36. Page 5, line 11.
Strike: "fund"
Insert: "account"
37. Page 5, line 12.
Strike: "fund's"
Insert: "account's"
38. Page 5, line 14.
Following: "court"
Strike: remainder of line 14 through "judgments" on line 15.

Continued on Page 5

Senate Judiciary Committee

Page 5

Re: SB237

February 9, 19... 83..

39. Page 5, line 16.
Strike: "a"
Insert: "the"
Strike: "reparation fund"
Insert: "compensation account"
40. Page 6, line 5.
Strike: "judgment in favor of"
Insert: "pecuniary loss awarded to"
41. Page 6, line 8.
Strike: "hold a separate hearing to"
42. Page 6, line 9.
Strike: "validity and"

And, as so amended,

DO PASS