

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 15, 1983

The forty-third meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 15, 1983 at 10:00 a.m. in Room 325, State Capitol.

ROLL-CALL: All members were present.

CONSIDERATION OF HOUSE BILL 584: Representative Hannah, House District #67, principle sponsor of the bill, stated that he sponsored this bill on behalf of the Task Force on Corrections. He said that this bill clarifies the basic language. He stated that the bill increases the number of aggravating circumstances and has the effect of expanding the areas that we have on the books where the death penalty may be imposed. He said that in Line 6 of the Title, the key word is where it says "may".

There being no further proponents, the hearing was opened to the opponents.

OPPONENTS: Cathy Campbell, representing the Montana Association of Churches, spoke in opposition to this bill. She said the association is opposed to HB 584 because it is opposed to the death penalty. The Montana Association of Churches has looked at the issue of capital punishment in some depth and has come to the conclusion that it opposes it. Ms. Campbell also submitted written testimony. (Exhibit No. 1).

Senator Galt asked if county jails had been purposefully eliminated from "correctional facility" and Representative Hannah answered yes, saying we are dealing with different individuals in county jails who may be in there for a short time. The feeling was that in a state correctional facility inmates have nothing to loose by killing another inmate or another guard. We can justify the need for additional penalties for these inmates.

Senator Turnage asked John Maynard, what effect might the bill have on handling appeals of condemned persons. Mr. Maynard replied, that he didn't think this bill would have any effect. The aggravating circumstance that has been utilized in Montana, the only one that might have an effect, is No. 3 - by means of torture.

There being no further opponents, the hearing on HB 584 was closed.

CONSIDERATION OF HOUSE BILL 501: Representative Carol Farris, of House District No. 41, and sponsor of the bill, stated that the bill was introduced at the request of the Human Rights Commission. It implements a Montana Supreme Court ruling holding that marital status discrimination is unlawful discrimination. What it will do is it would allow employers to say he doesn't want two members of the same family.

PROPOSERS: Raymond Brown, representing the Montana Human Rights Commission, said that the language of the proposed bill is self-limiting because of the language of Section 49-2-402, MCA, which requires the word "reasonable" as used in Chapter, Title 49, to be strictly construed. He also submitted written testimony (Exhibit 2).

Mr. LeRoy Schramm, Chief Legal Counsel of the Montana University System, stated that SB 179 introduced by Senator Stimatz and this bill are worded slightly differently but the effect is almost identical. If you are a public official, you are prohibited by nepotism status of hiring your son or daughter. If you refuse to hire your son-in-law or daughter-in-law, it would be violating the civil rights law. If you refused to hire your spouse, it would be violating the State Human Rights Act. Your son or daughter are not related to you because of marital status. When you get to in-laws you get into nepotism statute. Once at the Havre campus and once at Montana Tech, a supervisor hired a spouse and the other his son-in-law, and the Commissioner's office refused to allow that. He said the Commissioner urges the Committee to pass the bill.

Chip Erdman, representing the Montana School Board Association, said that HB 501 will allow more consistency in this area.

There being no further proponents, the hearing was closed on HB 501.

CONSIDERATION OF HOUSE BILL 524: Representative Paula Darko, District #22, principle sponsor of the bill, advised that the bill was submitted at the request of the Human Rights Commission. She said it repeals Section 49-2-601 and submitted written testimony. (Exhibit 3):

Raymond Brown, Administrator of the Human Rights Commission, said that the Commission believes that the enforcement of the Human Rights Act is properly a matter for civil, not criminal, jurisdiction and therefore, recommends the repeal of Section 49-2-601, MCA. He submitted written testimony. (Exhibit 4).

There being no opponents, the hearing was closed on HB 524.

DISPOSITION OF HOUSE BILL 501: A motion was made by Senator Mazurek that House Bill No. 501 BE CONCURRED IN. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 524: A motion was made by Senator Mazurek that House Bill 524 BE CONCURRED IN. After brief discussion, the motion was withdrawn.

DISPOSITION OF HOUSE BILL 584: A motion was made by Senator Crippen that HOUSE BILL 584 Be Tabled. The motion carried unanimously.

FURTHER CONSIDERATION OF HB 825: Senator Turnage said that House Bill 825 is on second reading and the Committee either has to have it re-referred to the committee or handle it on the floor.

Ward Shanahan, representing the Northern Tier Pipeline, said the bill is essentially re-writing the show-cause chapter. On page 9

the amendment following line 6 provides a safeguard if the court feels a party needs more time. The court under the rules has the discretion to extend the time further. It can extend the hearing if any of the rights of a party are prejudiced.

Mr. Jim Beck, representing the Department of Highways, stated that he concurs with Mr. Shanahan. He said the usual practice is for the lawyers to set a date for trial without going before the judge to get a time set. There is a tendency for these cases to drag on.

Tim Stearns, representing Northern Plains Resources Council said the amendment submitted by NPRC gives the court flexibility. That amendment is virtually the same as Rule 6 of the 13th Judicial District. Mr. Shanahan added that amendment No. 7 (on the Standing Committee Report #5 submitted by NPRC) gives the court everything that he is talking about.

Senator Turnage repeated that the Committee can have the bill re-referred to the Judiciary Committee or can move it out on the floor.

Mr. Stearns said NPRC feels 60 days was unreasonable.

MOTION ON HOUSE BILL 825: A motion was made by Senator Crippen that House Bill 825 be re-referred back to the Judiciary Committee. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 808: Representative Kitselman, District No. 60, stated that he had thought long and hard on this proposal. The questions that came to his mind were "How can one prevent innocent people from being killed? How can one hold down traffic accidents? How can one protect and make easier our peace officer's jobs? How does one protect the rights of individuals through due process?" This bill, in his opinion, answers all of the aforementioned questions. This bill protects innocent people from drunk drivers, by requiring for the immediate suspension of one's driver's license. This is now permissible as long as the person has due process. A receipt is issued by the officer and the person may drive on that permit for a period of 48 hours. He then explained various sections of the bill. He also read a letter from Doris Fisher of MADD in support of the bill (See Exhibit No. 6).

Larry Majerus, Administrator of the Motor Vehicle Division, Department of Justice, testified in support of the bill stating that in 1982 there were 1385 refusals by drivers to submit to a chemical test compared to 700 two years ago. This has almost doubled in two years. He presented a proposed amendment to the Committee (Exhibit No. 7).

Michael Wood, representing the Missoula County Task Force for Prevention of Drunk Driving, spoke in favor of the bill. He also presented a fact sheet pertaining to drunk drivers (Exhibit No. 8).

Michael Wood also read a statement from Jim Nugent, Missoula City Attorney, in support of the bill (Exhibit No. 9). He referred to the

fact that in order for the state to be eligible for federal monies earmarked for dealing with drunk driving, it was his understanding that federal guidelines require a first time offender who refuses to submit to a chemical test must have his driver's license suspended for at least 90 days.

Betty Wing, Deputy County Attorney from Missoula County, proposed an amendment to the bill to include all public lands (Exhibit No. 10). She agreed with Mr. Nugent's statement that the geographical area should be expanded to include all public lands and ways open to the public. In Missoula, individuals drive on the parks, campuses, etc., and nothing can be done about it as the law does not cover other public grounds.

She also stated that if an appeal is taken it has to be taken to the district court of the residence of the individual and that means travel for the arresting officer. This bill would eliminate the travel.

Albert Goke, Administrator of the Highway Traffic Safety Council, concurred in House Bill 808 and stated that the Committee had been previously notified that the state had to have certain laws in order to get federal funding to help control drunk drivers. If the requirements are met, the state could get \$300,000 per year for 3 years. He submitted a written statement (Exhibit No. 11).

Cathy Campbell of the Montana Association of Churches, stated that they were in support of the bill and submitted a written statement (See Exhibit No. 12).

Being there were no further proponents or opponents, questions were asked by the committee. Senator Shaw asked Betty Wing if she knew how many drivers in serious accidents had bonafide drivers' licenses. She stated that she had no idea. The only thing she could hope was that when an officer arrests you and tells you if you don't take the test you will lose your license, it will scare you enough to take the test. Some don't care.

Senator Shaw asked what the \$300,000 would be used for. Mr. Goke explained that it would go towards buying laboratory equipment, etc.

Senator Mazurek said we shouldn't treat alcohol the same as driving under drugs. He asked Betty Wing how she would respond to the apparent concern about a fishing access site where someone is drinking. He could be arrested at the fishing access site, sitting in his truck if the proposed amendment is adopted.

Betty Wing said it seems like it would be impossible that someone would be arrested like that -- there is enough trouble getting people arrested who are weeving all over the roads.

Representative Kitselman closed on HB 808. He said he would support the proposed amendment for a ninety day penalty. He urged passage of this bill. It makes the job easier and provides due process. The rest of the bill is current law.

There being no further proponents the hearing on HB 808 was closed.

DISPOSITION OF HOUSE BILL 524: A motion was made by Senator Crippen that House Bill No. 524 Be Tabled. The motion carried unanimously.

ADJOURNMENT: A motion was made by Senator Galt that the meeting be adjourned. The motion carried unanimously and the meeting was adjourned at 11:30 a.m.

SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 3/15/83

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

Each day attach to minutes

DATE _____

COMMITTEE ON

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)



MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 1708 • Helena, MT 59601

March 15, 1983

WORKING TOGETHER:

American Baptist Churches
of the Northwest

American Lutheran Church
Rocky Mountain District

Christian Church
(Disciples of Christ)
in Montana

Episcopal Church
Diocese of Montana

Lutheran Church
in America
Pacific Northwest Synod

Roman Catholic Diocese
of Great Falls

Roman Catholic Diocese
of Helena

United Church
of Christ
Montana Conference

United Presbyterian Church
Glacier Presbytery

United Methodist Church
Yellowstone Conference

United Presbyterian Church
Yellowstone Presbytery

MR. CHAIRMAN AND MEMBERS OF THE HOUSE JUDICIARY
COMMITTEE:

I am Cathy Campbell representing the Montana
Association of Churches.

We are opposed to House Bill 584 because we are
opposed to the death penalty.

Historically the use of the death penalty has
discriminated against the poor and racial minorities.
There is no conclusive evidence to show that the death
penalty is a deterrent to crime.

But basically it can be seen as a moral or ethical
issue, the kind of issue in which it is possible for
people of equally sincere persuasion may look at the
same facts and arrive at different conclusions.

The Montana Association of Churches has looked
at the issue of capital punishment in some depth and
and we have come to the conclusion that we oppose it.

I hope that you will take our view into consideration
when you make a decision on HB 584.

Raymond B. Nelson
Exhibit 2

POSITION STATEMENT OF THE HUMAN RIGHTS COMMISSION IN SUPPORT OF ITS
PROPOSED BILL TO PROVIDE AN EXCEPTION TO THE LAWS PROHIBITING DISCRIMINATION
IN EMPLOYMENT ON THE BASIS OF MARITAL STATUS WHEN THE REASONABLE DEMANDS OF
THE POSITION REQUIRE A MARITAL STATUS DISTINCTION.

In May, 1981, the Montana Supreme Court decided a case which interpreted the Montana Human Rights Act's prohibition against marital status discrimination, Thompson v. Board of Trustees, School District No. 12. The case involved a nepotism policy adopted by a school board which provided that a school administrator employed in the school district could not also have a spouse employed with the district. The court held that the term "marital status" includes the identity and occupation of one's spouse as well as the state of being single, married, divorced, widowed, and so on. The Court also held that the statute did not provide for any exceptions to the prohibition of discrimination. In view of the broad construction of the term "marital status" adopted by the Court, the Commission believes that some limited exceptions to the prohibitions of marital status discrimination in employment should exist, for example, in situations where an employee audits the work of another employee or in the case of governmental employment, where nepotism is prohibited by law. The language of the proposed bill is self-limiting because of the language of Section 49-2-402, MCA, which requires the word "reasonable" as used in Chapter, Title 49, to be strictly construed.

or which a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and cause to be served on the complainant an order dismissing the complaint.

History: En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(3); amd. Sec. 11, Ch. 177, L. 1979.

49-2-508. Injunction to enforce commission order. If the commission's order is not obeyed, the commission staff shall petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by injunction.

History: En. 64-310 by Sec. 7, Ch. 283, L. 1974; amd. Sec. 8, Ch. 524, L. 1975; R.C.M. 1947, 64-310.

Part 6

Penalties

49-2-601. Criminal penalty. A person, educational institution, or financial institution, either public or private, or a governmental entity or agency who or which willfully engages in an unlawful discriminatory practice prohibited by this chapter or willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its authorized representatives in the performance of a duty under this chapter or who or which willfully violates an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor and is punishable by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(3); amd. Sec. 12, Ch. 177, L. 1979.

CHAPTER 3

GOVERNMENTAL CODE OF FAIR PRACTICES

Part 1 — General Provisions

Section	
49-3-101.	Definitions.
49-3-102.	What local governmental units affected.
49-3-103.	Permitted distinctions.
49-3-104.	Quotas not required.

Part 2 — Duties of Governmental Agencies and Officials

- 49-3-201. Employment of state and local government personnel.
- 49-3-202. Employment referrals and placement services.
- 49-3-203. Educational, counseling, and training programs.
- 49-3-204. Licensing.
- 49-3-205. Governmental services.
- 49-3-206. Distribution of governmental funds.
- 49-3-207. Nondiscrimination provision in all public contracts.
- 49-3-208. Public accommodations laws.

Rep Paula Darks Exhibit 3
999 GOVERNME

Part 3

49-3-301. Cooperation with commi
49-3-302. Annual reports to govern
49-3-303. Remedies for individuals

49-3-101. Definitions
tions apply:

(a) all branches, departments, university units, colleges, and schools; and

(b) counties, cities, towns, and villages, and the State government and all instrumentalities thereof;

(2) "Qualifications" means competent performance of

History: (1)En. 64-316 by Sec.
Sec. 4, Ch. 487, L. 1975; amd. Sec.
64-316, 64-319(part); amd. Sec. 13,

49-3-102. What local mental units affected by the state, including school districts

History: En. 64-327 by Sec. 12.

49-3-103. Permitted
hibit any public or private

(1) from enforcing a handicap when based on necessary to the normal differentiation is based on re

(2) from observing the
fide employee benefit plan
which is not a subterfuge
no such employee benefit
of

(3) from discharging
cause.

History: En. 64-328 by Sec. 1

49-3-104. Quotas construed as requiring the of any sex, age, religious ter.

History: En. 64-330 by Sec.

Raymond Breckon
Exhibit 4

POSITION STATEMENT OF THE HUMAN RIGHTS COMMISSION IN SUPPORT OF ITS PROPOSED BILL TO ELIMINATE CRIMINAL PENALTIES FOR THE VIOLATION OF THE HUMAN RIGHTS ACT.

The Montana Human Rights Act was enacted in 1974 and contained Section 49-2-601, MCA, which established criminal penalties for willfully engaging in unlawful discriminatory practices, willfully resisting, preventing, impeding, or interfering with the Commission in the performance of its duties, and willfully violating an order of the Commission. The Commission is not aware of any instance where this provision has been used as the basis for a criminal prosecution since its enactment. In several instances, the Commission has had difficulty in obtaining voluntary cooperation from respondents in its investigations because of the fear of self-incrimination. The Commission believes that the enforcement of the Human Rights Act is properly a matter for civil, not criminal, jurisdiction and therefore recommends the repeal of Section 49-2-601, MCA.

HB 825
Encl 5

HOUSE BILL 825

Timeframe compromise

Page 5, line 2.

INSERT:

At anytime within 10 days after the defendant's answer has been filed, either party may request that the case be placed on the pre-trial calendar. Following such a request, the court shall mail to each attorney of record a notice of preliminary pre-trial conference. At the preliminary pre-trial conference, each attorney shall advise the court of the issues involved in the case, the amount of time necessary for discovery, and the estimated length of time of the trial. At the preliminary pre-trial conference, the court shall establish a time limit for discovery, a date for the final pre-trial conference and a trial date.

NAME _____

BILL NO. HB 825

ADDRESS _____

DATE Exh 5

WHOM DO YOU REPRESENT _____

SUPPORT _____

OPPOSE _____

AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Page 5, line 2.

Following: "thereon."

Insert: "A summons served under this chapter must contain a notice to the defendant to file and serve an answer. Within 40 days from the date the answer is required to be filed, the court shall commence its hearing on whether a preliminary condemnation order should issue."

3/14/83

*Exhibit 6
Read by Rep Kitzelmeier*

HB 808

Senate Judiciary Committee
Capitol Building
Helena, Mt.

Gentlemen:

Please enter into the record that our MADD group would like HB 808 to be passed with a 6 month suspension for refusal.

1. A contract with the State of Montana should be respected. Respect is taught. Therefore, when the contract is broken, i.e. a refusal to submit to a chemical test, there must be a penalty which is substantial.
2. We MUST take the incentive away for a refusal. Our manipulative drinkers will make a mockery of our system.
3. This is one of the large stones in the wall we need in Montana to confront our drinking drivers. HB 250 and HB 540 confront the drunk driver in Montana. Without a large penalty for refusing, all is a game for the offender.
4. This is a DEAD serious problem; we must confront the games played with the safety and happiness of our citizens in order to affect a change in bad behavior. The growth and development of our state depends on all of joining together to stop alcohol-related traffic deaths and injuries.

Thank you again for your serious help.

Sincerely,

Doris Fisher

Doris Fisher for MADD

Exhibit 7

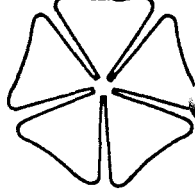
PROPOSED AMENDMENT TO HB 808

Page 8, Line 4: amend phrase "his license must be
suspended for 60 days." to read "his license must be
suspended for 90 days."

Exhibit 8

MISSOULA CITY-COUNTY HEALTH DEPARTMENT

301 West Alder • Missoula, Montana 59802 • Ph. (406) 721-5700



I am Michael Wood, M.S., M.P.H., from the Missoula City-County Health Department. I work with a drunk driver prevention program and represent a 30-member task force in Missoula working on the problem of drunk driving. With the proposed amendment by the Department of Justice, we support H.B. 808.

By this time, most of us in this room are abundantly aware of the facts on drunk driving. I have attached some pertinent ones on a separate sheet for your review.

An unfortunate thing happens sometimes as we become familiar with the boundaries of a problem such as drunk driving: we may lose sight of what that problem means. Drunk driving in this country and this state means broken cars, broken bodies and broken lives. We can measure the costs in property damage, physical and mental pain, health care dollars, and the ultimate cost: death.

If we look at the fact sheet, then we know what it costs to do not exactly nothing, but less than our best effort in combating drunk driving. The passage of H.B. 808 is a cornerstone in doing our best effort on drunk driving. Swift loss of a driver's license upon refusing a breath test can ultimately protect both the putative drunk driver and the public by removing this person from the driving population for a period of time. This sets up a process whereby people with suspected drinking problems are more apt to get help for drinking problems.

And making some assumptions about similarities between people who refuse the breath test and the average BAC of those who are arrested for DUI, it becomes clear that the people who would be affected by H.B. 808 simply would not be your average social drinker, unlucky enough to be caught on their way home from a family birthday party. In its amended version, H.B. 808 provides for a 90 day suspension of one's driver's license upon refusal of a breath test. While this is an improvement over the 60 day suspension currently on the books, it does not really go far enough. If the penalty for refusal is more in line with the penalty for conviction, we can expect to decrease the rate of refusal, which is currently in the neighborhood of 30%. We suggest that a six month suspension upon refusal is a more fair and logical penalty and will result in more convictions and act as a stronger deterrent against drunk driving.

On behalf of the Missoula County Task Force on the Prevention of Drunk Driving, I cannot understate our feeling that the passage of H.B. 808 is timely, appropriate, and badly needed.

Thank you.

MWW:mjp
3/14/83

Attachment

Facts Relating to Drunk Driving

- . Over 50,000 people in this country die each year in automobile accidents.
- . At least half of the 50,000 automobile fatalities are alcohol related.
- . 1.5 million Americans are injured each year in alcohol-related accidents.
- . Drunk driving costs this country over \$24 billion each year in property damage, loss of wages, medical and legal fees.
- . Alcohol-related car crashes are the number one cause of death for Americans under age 40.
- . Legal intoxication is a blood alcohol concentration (BAC) of 0.10% (1 drop of alcohol in 1,000 drops of blood).
- . A 200 pound person can become legally intoxicated by drinking 6 drinks in about an hour (a 12 ounce bottle of beer contains the same amount of alcohol as 5 ounces of wine or 1½ ounces of 80 proof whiskey).
- . The average BAC of a person arrested for Driving Under the Influence (DUI) in Montana is 0.18%.
- . A 200 pound person would have to consume 11 drinks (beers, etc.) to reach a BAC of 0.18%.
- . Problem drinkers represent about 13% of the driving population.
- . Nationally, problem drinkers constitute about two-thirds of DUI arrests.

Exhibit 9

TO: SENATE JUDICIARY COMMITTEE MEMBERS

FROM: JIM NUGENT, MISSOULA CITY ATTORNEY

RE: HOUSE BILL 808 - IMMEDIATE SUSPENSION OF DRIVERS' LICENSES OF THOSE REFUSING TO SUBMIT TO CHEMICAL TEST; INCREASING SUSPENSION PERIODS; AND EXTENDING THE GEOGRAPHICAL AREA FOR THE APPLICABILITY OF LAWS ON DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL

DATE: MARCH 14, 1983

Memo 83-48

Dear Senate Judiciary Committee Members:

I would like to express my support for House Bill 808 but would encourage your adoption of a couple of amendments. In order to be eligible for federal monies earmarked for dealing with drunk driving it is my understanding that federal guidelines require that an offender for the first time within five years who refuses to submit to a chemical test must have his/her driver's license suspended for at least 90 days. Immediate suspension of a driver's license is necessary for the reason there is a problem in getting people to voluntarily turn in their suspended license. Also, I would like to urge your support for an amendment to HB 808 that would in the interests of public safety extend the geographical applicability of laws prohibiting the operation or physical control of motor vehicles while under the influence of alcohol to include geographical areas of this state in addition to "highways of this state" (Section 61-8-401(1)(a), M.C.A. I am aware of many fact situations within the City of Missoula where the City police have either apprehended or been called to a location where a D.U.I. offender is off a highway and is also off of "ways of the state open to the public." These types of areas include parks, boulevards, school campus yards (including grade and high schools as well as college), railroad rights-of-way, private yards. When I commenced prosecuting D.U.I. cases for the City of Missoula in June, 1975, the Revised Codes of Montana allowed the prosecution of all D.U.I. offenders who were anywhere in the state. However, in 1979, during

JN/jd
cc: Police Chief Pfau
Judge Wallace N. Clark
Jim Nugent, Missoula City Attorney

Therefore, I would strongly urge your consideration for an amendment to HB 808 that would extend the ability to prosecute D.U.I. offenders under the influence of alcohol to all geographical areas in addition to the highways of this state. Also, as noted earlier, I would urge you to amend the time period for suspension of a driver's license when an individual refuses to submit to a chemical test to at least 90 days for a first offender within five (5) years. This would allow the State to be eligible to receive federal funds for addressing drunk drivers and would also serve the dual purpose of reducing the likelihood that a person would refuse to take the test and also could serve as a deterrent to driving under the influence of alcohol. Thank you.

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

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

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

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

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

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

NAME: Betty Wing DATE: 3/15/83

ADDRESS: 329 So 2nd W, Missoula

PHONE: 721-5700 x246

REPRESENTING WHOM? Missoula Co Task Force for Prevention of Drunk Driving

APPEARING ON WHICH PROPOSAL: HB 808

DO YOU: SUPPORT? ☒ AMEND? ☒ OPPOSE? ☐

COMMENTS: I support immediate suspension of driver's licenses
for refusal. I support suspension of license for 6 mo
for first refusal and one year for second and subsequent
offenses.

I propose an amendment to expand the geographical
area to all state public lands and ways open to the
public.

I believe it is important to balance the suspension
period for refusal with the suspension period for
conviction. We need to promote the taking of a blood
alcohol test.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

MISSOULA COUNTY

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

ROBERT L. DESCHAMPS III
COUNTY ATTORNEY

Betty Wing
Deputy County Attorney

Proponent of House Bill 808

Proposed amendments:

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

HIGHLIGHTS

FINAL RULE: INCENTIVE GRANT CRITERIA FOR ALCOHOL TRAFFIC SAFETY PROGRAMS AND REQUIRED CHANGES TO INTRODUCED LEGISLATION TO QUALIFY FOR \$300,000 PER YEAR FOR 3 YEARS

FOUR BASIC GRANT CRITERIA

NO. 1: PROMPT LICENSE SUSPENSION

THE FIRST CRITERION ESTABLISHED BY CONGRESS FOR BASIC GRANT ELIGIBILITY REQUIRES:

THE PROMPT SUSPENSION, FOR A PERIOD NOT LESS THAN NINETY DAYS IN THE CASE OF A FIRST OFFENDER AND NOT LESS THAN ONE YEAR IN THE CASE OF ANY REPEAT OFFENDER, OF THE DRIVER'S LICENSE OF ANY INDIVIDUAL WHO A LAW ENFORCEMENT OFFICER HAS PROBABLE CAUSE UNDER STATE LAW TO BELIEVE HAS COMMITTED AN ALCOHOL-RELATED TRAFFIC OFFENSE, AND (i) TO WHOM IS ADMINISTERED ONE OR MORE CHEMICAL TESTS TO DETERMINE WHETHER THE INDIVIDUAL WAS INTOXICATED WHILE OPERATING THE MOTOR VEHICLE AND WHO IS DETERMINED, AS A RESULT OF SUCH TESTS TO BE INTOXICATED, OR (ii) WHO REFUSES TO SUBMIT TO SUCH A TEST AS PROPOSED BY THE OFFICER.

"PROMPT"

- license suspension within an average of 45 days from time of arrest;
- but, States reaching average of 90 days from time of arrest may qualify if they submit a plan showing how they will reduce the average to 45 days;
- in order to be eligible for each of the supplemental criteria, a State must have a license suspension system in which average time to suspend a license does not exceed 45 days.

"SUSPENSION" FOR 90 DAYS ON FIRST OFFENSE

- full suspension for 30 days and use of a restricted provisional or conditional license for the remaining 60 days;
- no restricted or limited licenses for second offenders or persons refusing to take BAC test.

CURRENT LEGISLATIVE ANALYSIS

S.B. 313 Refusal To Submit To A Chemical Test

Because of provision No. 1 (ii) above, the bill would require an amendment to page 3, line 16 changing the words, "6 months" to "1 year." (The 90 day provision is currently met.)

H.B. 808 Refusal To Submit To A Chemical Test

Because of provision No. 1 above, the bill would require an amendment to page 8, line 4 changing the words, "60 days" to "90 days." (The 1 year provision is currently met.)

NO. 2: MANDATORY SENTENCE

THE SECOND CRITERION ESTABLISHED BY CONGRESS FOR BASIC GRANT ELIGIBILITY REQUIRES:

A MANDATORY SENTENCE, WHICH SHALL NOT BE SUBJECT TO SUSPENSION OR PROBATION, OF (i) IMPRISONMENT FOR NOT LESS THAN 48 CONSECUTIVE HOURS, OR (ii) NOT LESS THAN TEN DAYS OF COMMUNITY SERVICE, OF ANY PERSON CONVICTED OF DRIVING WHILE INTOXICATED MORE THAN ONCE IN ANY FIVE-YEAR PERIOD.

"IMPRISONMENT" includes confinement not only in jails or prisons, but also in such places as minimum security facilities or in-patient rehabilitation/treatment centers.

copies of existing legislation/regulations on mandatory sentences adequate to demonstrate compliance. Statistically valid samples can suffice for data on average sentence imposed on repeat offenders. Only data on general types of confinement (jail, treatment centers) to be required, not confinement used for each individual.

CURRENT LEGISLATIVE ANALYSIS

H.B. 250 Mandatory Term Of Imprisonment

The following amendments to H.B. 250 are proposed in order to render the State of Montana eligible to receive federal funding under the Incentive Grant Program for Alcohol Traffic Safety Programs:

page 1, line 12: Add "providing for jail terms of consecutive hours."

page 2, line 5: After "days," Add: ", at least 48 hours of which must be served consecutively,"

page 2, line 12: After "days," Add: ", at least 48 hours of which must be served consecutively,"

NO. 3: ILLEGAL PER SE LAWS

THE THIRD CRITERION ESTABLISHED BY CONGRESS FOR BASIC GRANT ELIGIBILITY REQUIRES STATES TO HAVE A LAW THAT:

PROVIDES THAT ANY PERSON WITH A BLOOD ALCOHOL CONCENTRATION OF 0.10 PERCENT OR GREATER WHEN DRIVING A MOTOR VEHICLE SHALL BE DEEMED TO BE DRIVING WHILE INTOXICATED.

.10% as presumptive level, rather than illegal per se, does not comply.

CURRENT LEGISLATIVE ANALYSIS

H.B. 540 Illegal Per Se

H.B. 540 is considered adequate to meet this provision as it passed the House.

NO. 4: INCREASED ENFORCEMENT/PUBLIC INFORMATION EFFORTS

THE FOURTH AND FINAL CRITERION ESTABLISHED BY CONGRESS FOR BASIC GRANT ELIGIBILITY REQUIRES:

INCREASED EFFORTS OR RESOURCES DEDICATED TO THE ENFORCEMENT OF ALCOHOL-RELATED TRAFFIC LAWS AND INCREASED EFFORTS TO INFORM THE PUBLIC OF SUCH ENFORCEMENT.

States will determine which indicators are most appropriate to demonstrate increased efforts

Demonstration of increased levels of effort made through comparison of F.Y. 1982 (or later years) with prior preceding year or average of State efforts over 3 years preceding year in which State first applies for a grant.

CURRENT LEGISLATIVE ANALYSIS

No legislative action required.

GENERAL ANALYSIS

The minor changes to bills introduced in this legislative session, in conjunction with existing laws and programs already established, are felt to be sufficient to qualify Montana for the 3 year incentive funding from the federal level. No penalties of any nature would be made to the state if we do not comply, however. The funds are incentive in nature only and would be used to strengthen our drinking and driving prevention activities.



WORKING TOGETHER:

March 15, 1983

American Baptist Churches
of the Northwest

MR. CHAIRMAN AND MEMBERS OF THE SENATE JUDICIARY
COMMITTEE:

American Lutheran Church
Rocky Mountain District

I am Cathy Campbell representing the Montana
Association of Churches.

Christian Church
(Disciples of Christ)
in Montana

We support sound legislation designed to promote
traffic safety. In particular, we endorse legislation
that will effectively impede the menace of driving
under the influence of alcohol or other drugs.

Episcopal Church
Diocese of Montana

House Bill 808 would help do this by allowing the
suspension of the driver's license of a person refusing
to submit to a chemical test and by expanding the
geographical application of the DUI laws.

Lutheran Church
in America
Pacific Northwest Synod

Since a drinking driver is involved in a large
proportion of traffic accidents, it is a very serious
problem. We therefore support HB 808 as a means of
dealing with the problem.

Roman Catholic Diocese
of Great Falls

Roman Catholic Diocese
of Helena

United Church
of Christ
Montana Conference

United Presbyterian Church
Glacier Presbytery

United Methodist Church
Yellowstone Conference

United Presbyterian Church
Yellowstone Presbytery

(This sheet to be used by those testifying on a bill.)

NAME: Michael Ward DATE: 3/15/82

ADDRESS: 301 W. 11th St. N. 17th St. N.

PHONE: 721-5700 x377

REPRESENTING WHOM? As a member of the District Council

APPEARING ON WHICH PROPOSAL: HVS 808

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: Support 6 month

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WITNESS STATEMENT

Name LeRoy H. Schramm Date 3-15-81
Address 1000 9th Ave. Support ? X
Representing Mt. Univ. System Oppose ? _____
Which Bill ? H.B. 501 Amend ? _____
Comments:

Please leave prepared statement with the committee secretary.

John

NAME: Cathy Campbell DATE: 3/15/83

ADDRESS: 7011 York Rd. Helena

PHONE: 442-5761

REPRESENTING WHOM? Montana Assn of Churches

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? HB 808 AMEND? OPPOSE? HB 584

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Raymond D. Brown DATE: 3/15/83

ADDRESS: RM C-317, Cogswell Bldg, HCN

PHONE: 449-2884

REPRESENTING WHOM? Mont. Human Rights Comm.

APPEARING ON WHICH PROPOSAL: HB 501 + 524

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

COMMENTS: ATTACHED

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

March 15

19 83

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 501

Farris (Berg)

Respectfully report as follows: That HOUSE Bill No. 501

BE CONCURRED IN

DO PASS

J.C.