MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 23, 1983

The fiftieth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage at 10:05 a.m., on March 23, 1983, in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 540: Representative Vincent, sponsor of the bill, testified that HB540 is a significant piece of legislation which will help Montana law enforcement officers and benefit Montana citizens. Representative Vincent explained that under Montana's present laws, if you are arrested for DUI, you first submit to some type of chemical test to determine the blood-alcohol level. Many times a Defendant will testify in court that even though his blood-alcohol level was over that necessary to constitute DUI, he was still in control of his senses. Representative Vincent informed the committee that in addition to submitting to a chemical test, law enforcement officers often have the suspect walk a straight line, recite the alphabet or touch his finger to his nose, to determine the degree of intoxication. Representative Vincent testified that many persons are acquitted of a DUI charge when they passed the physical tests but failed the chemical test. HB540 would alleviate this and the court would only be allowed to consider the blood-alcohol level as evidence. Representative Vincent believes the chemical test, if applied fairly, should be sufficient evidence for a court to convict a person on DUI. Representative Vincent stated that although HB540 is a complex bill, 28 states have similar laws in effect, with one state using a blood-alcohol level of .018 as the means for considering a person legally intoxicated.

PROPONENTS: Mr. Steven Johnson, Assistant Attorney General, submitted written testimony (see attached Exhibit "A") and testified that the Attorney General supports HB540, because it will increase the number of convictions of DUI's and decrease the amount of time and money involved in obtaining a conviction. Mr. Johnson stated that HB540 will provide for a new offense not presently contained in our current DUI laws. He testified HB540 makes two significant changes to our current law:

1. HB540 provides for a new offense by making it illegal to drive a motor vehicle with a blood-alcohol concentration of .10 or more; and

2. It provides for the admissibility of lab reports showing the blood-alcohol level as evidence in trial.

Mr. Johnson testified that because of the admissibility of this evidence at trial, the State will save a considerable amount of money because the lab technicians themselves will not have to make an appearance at trial. HB540 sets forth a direct requirement of varification of all signatures on these lab reports. Mr. Johnson testified that this is a major difference between our current laws and the proposed law in HB540, as the current law relies on a behavioral test, and the new law would rely on a chemical test. Mr. Johnson testified that HB540 is based on the Uniform Vehicle Code per se statute. He informed the Committee that because of the legal per se laws are so difficult to defend, there would be an increase of guilty pleas and a speedier resolution of cases.

Mr. Ronald Yates, representing Montanan's Against Drunk Drivers, submitted written testimony (see attached Exhibit "B") supporting HB540. Mr. Yates testified that in Missoula County last year, 12 out of 20 auto fatalities were alcohol related, as were 9 of the 13 accidents occurring in Lake County. Mr. Yates feels that the Legislature and law enforcement are the keys to making our laws work. He also believes that if HB540 becomes law, police officers will be more willing to make arrests, knowing that they have a better chance of obtaining a conviction. Mr. Yates stated that he feels the necessary .10 blood-alcohol level is too lenient. He also feels that use of the chemical test will provide uniformity in convictions throughout the state. Mr. Yates also testified that HB540 will allow an officer to arrest a DUI suspect on private property where, under the current law, he cannot do so.

Mr. Jim Nuggent, Missoula City Attorney, submitted written testimony (see attached Exhibit "C") in support of HB540. He stated that the passage of HB540 would make Montana elligible for federal money that, under our present law, is not available to us. Mr. Nuggent testified that this money would amount to approximately $300,000 a year for a period of three years to aid our DUI programs. Mr. Nuggent suggested the Committee amend HB540 to include public property such as parks and railroad property.

Mr. Ken Largin, representing Montanan's Against Drunk Drivers in Mineral County, submitted written testimony (see attached Exhibit "D") and testified in favor of HB540. Mr. Largin stated that no one can drive safely when their blood-alcohol level is .10, and it is time for everyone to accept this scientific fact. Mr. Largin stated that with the federal money Montana would be elligible for, we could better educate the public. Mr. Largin feels that children especially need to be educated about alcohol, so they can gow up to be responsible adults. Mr. Largin feels the DUI problem should receive more attention.

Mr. Michael Wood, Director of Health Education for the Missoula County Health Department, submitted written testimony (see attached Exhibit "E") and suggested that a .10 alcohol-blood level does not reflect a social drinker. Mr. Wood reminded the Committee that driving is a privilege and not a right. Mr. Wood is of the opinion that since driving without a valid driver's license is illegal per se, driving while under the influence should also be illegal per se. Mr. Wood feels that HB540 will send a message to the public that if you drive while under the influence of alcohol and get caught, you will most likely be convicted. Mr. Wood also feels that HB540 will increase the number of quilty pleas obtained from persons who have been arrested for DUI, but should not affect the social drinker. Mr. Wood feels that SB313, SB250 and HB540 together will help strengthen Montana's DUI laws and provide a long-term solution to the problem.

Cathy Campbell, representing the Montana Association of Churches, testified that she supports HB540.

Col. R. W. Landon, representing the Montana Highway Patrol, testified that heart disease and cancer are the only other things that kill more Montanan's than drunk drivers. Col. Landon believes that if HB540 passes, Montana will have the strongest DUI laws in the United States, Col. Landon suggested the Committee amend HB540 to include private property, since the majority of the public doesn't understand why the Highway Patrol is unable to make arrests of public property.

Justice Mike McCabe, Justice of the Peace, in Helena, testified that he has had much experience in trying DUI cases. Justice McCabe testified that the presumption contained on pp. 3-4 will aid in giving jury instructions to jury members. Justice McCabe feels, however, there will still be a substantial amount of testimony and witnesses testifying as to the behavior of the Defendant. Justice McCabe also informed the Committee that members of the jury also question why the blood-alcohol level is not submitted as evidence in a trial.

Mr. Ben Havdahl, from the Montana Motor Carrier's Association, testified that truck drivers are concerned with drunk drivers because of the number of trucks that become involved in alcohol related accidents. Their Association supports HB540.

Ms. Betty Wing submitted written testimony (see attached Exhibit "F") in support of HB540.

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

Senator Mazurek had questions concerning the rebuttable presumptions under Subsection 2 and the conclusive presumptions contained in Section 1. Senator Mazurek felt that perhaps these provisions should be separated into two separate statutes. Senator Mazurek questioned Mr. Johnson as to whether other states had combined the two offenses into one statute. Mr. Johnson agreed that the chemical and behavioral offenses should be separate and distinct.

Senator Crippen questioned why, if the illegal per se offense is a lessor offense, it carries the same penalty.

Senator Crippen questioned Col. Landon as to whe use of "Ways open to the public" and how the language should be changed to reflect places such as jogging trails and playgrounds.

Senator Daniels asked Mr. Johnson if a person could be charged with two counts, one for drunk driving per se and one for the traditional DUI. He was told yes, you could be charged and convicted on both counts. The Committee felt that you should be charged one way or the other to avoid a "double jeopardy" situation.

There being no further questions from the Committee, Representative Vincent closed the hearing by stating that HB540 is an important piece of legislation which provides for conclusive evidence. Representative Vincent stated that no one is as good a driver even with a .05 blood-alcohol level as they are when they are sober.

CONSIDERATION OF HOUSE BILL 191: Representative Ramirez, sponsor of the bill, stated that HB191 provides for a "division" of property as opposed to a "disposition" of property, for the purposes of tax and other laws. Representative Ramirez stated that several other states have modified their divorce laws to reflect this change. Representative Ramirez stated that HB191 contains no significant fiscal impact on the state.

PROPONENTS: Ms. Stacey Flaherty, representing the Women's Lobbyist Fund, submitted written testimony (see attached Exhibit "G") in support of HB191. Ms. Flaherty testified that HB191 will strengthen the current laws of the state and will eliminate negative tax consequences resulting from transfers of property in divorce proceedings.

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

Senator Turnage asked Representative Ramirez if it would cause any problems if the Committee replaced the word "common" with "vested" on page 3, line 4. Representative Ramirez stated that he had no problem with this suggestion.

CONSIDERATION OF HOUSE BILL 684: Representative Ramirez, sponsor of the bill, testified that this bill was proposed to correct a problem created in the 1979 Legislature with HB608 regarding the possession and sale of dangerous drugs. Representative Ramirez stated that there should be a ten-year sentence for the second conviction for possession of dangerous drugs, and a twenty-year sentence for the third conviction for sale of dangerous drugs. Representative Ramirez stated that this is a serious offense and should have a strict mandatory sentence.

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

CONSIDERATION OF HOUSE BILL 880: Representative Bergene, sponsor of the bill, testified that HB880 deals with abuse of elderly persons. She informed the Committee that abuse of the elderly is as common as child abuse in Montana. Representative Bergene then opened the hearing to proponents of HB880 and reserved the right to close.

PROPONENTS: Ms. Celinda C. Lake, representing the Women's Lobbyist Fund, submitted written testimony (see attached Exhibit "H") and testified that abuse of the elderly is equal in magnitude to child abuse and spouse abuse. Ms. Lake stated that 4 percent of the elderly are abused and the abuser in 70 percent of the cases is the person whom the elderly person depends on for his or her care.

Ms. Lake feels that since we protect children from abuse, we should also attempt to protect the elderly.

Ms. Norma Vestre, representing the Montana Department of Social and Rehabilitation Services, testified that she supports HB880.

Mr. Douglas B. Olson, representing the Montana Senior's Advocacy Assistance, submitted written testimony (see attached Exhibit "I") in favor of HB880. Mr. Olson testified that the amount of elderly abuse is unknown in Montana, because of a lack of reporting of incidents. Mr. Olson stated that HB880 mirrors our current child abuse laws and gives persons who are trained in this field a chance to intervene if they suspect an elderly person is being abused. Mr. Olson testified that the SRS has an adult protection service which tries to help in situations where an elderly person is being abused. Mr. Olson also stated that he believes nursing home administrators will offer amendments to HB880, and he is opposed to these amendments.

Mr. Charles Briggs of the Governor's Office, testified that we do not hear many instances of abuse of the elderly or what kinds of abuse are taking place, since many instances are not reported. Mr. Briggs testified that a Congressional Committee

formed to investigate elderly abuse, found that the number of abused is slightly less than the amount of abused children. Mr. Briggs believes that the key to HB880 is the mandatory reporting aspect. Mr. Briggs believes this mandatory reporting is necessary to obtain data. Representative Bergene closed the hearing by stating that she noticed some "technical flaws" in the bill that need to be changed. Senator Turnage stated that he has problems with the "sovereign immunity" provision in Section 7, and that he feels the bill should contain a severability clause.

Ms. Shirley Hunnis, Montana Nurses Association, supports HB880.

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

CONSIDERATION OF HOUSE BILL 856: Representative Bergene, sponsor of the bill, stated that this bill provides for limited emancipation of people ages 16-18.

Ms. Billie Nimmons, a senior in high school, testified that she believes this bill in in the best interest of the children of Montana. Ms. Nimmons has lived alone and been self-supporting since she lost her parents. Ms. Nimmons feels this bill will save money for the SRS and save some children from having to go through the trauma of being placed in a foster home.

Mr. Dick Meeker, Chief Probation Officer for the First Judicial District, testified that 50 percent of the children who come into contact with the probation system are abused children. He also testified that HB856 is an effort to help children who are responsible enough to establish themselves in the community yet still give guidance in areas where it is needed. Mr. Meeker reminded the Committee that abused children become abusive parents.

Ms. Norma Vestre testified that she supports HB856.

Ms. Stacey Flaherty, representing the Women's Lobbyist Fund, submitted written testimony (see attached Exhibit "J") in support of HB856.

OPPOSITION: Mr. Glen Hufstetter, Chief Probation Officer for the Eleventh Judicial District, testified that he has a few problems with the bill. One of his problems is that he is concerned because under this system, a youth could apply and obtain food stamps at state expense. Mr. Hufstetter also wondered who would be responsible for the attorney fees incurred in removing the child from the home. Mr. Hufstetter was also concerned as to what would happen in the situation where this privilege had to be revoked. Mr. Hufstetter was concerned with how a child would be able to pay his bills, such as medical costs.

DATE

COMMITTEE ON Senate Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Col. R.W. Landon	Hiway Patrol	HB 540	X	
Cathy Campbell	MT. Assn. of Churches	HB 540	X	
Albert Goke	Highway Safety Div. - Justice	HB 540	X	
Marna Costa	SRS	880	X	
Nurna Vesto	SRS	856	✓	
Jim Nugent	City of Missoula	540	X with Amendma	
Ronald Yates	M.A.D.D.	540	X	
Michael Wood	Missoula Task Force on Drunk Driving	HB 540	X	
Doug Olson	MT. Senior Citizens Assoc.	880	✓	
Stacy Flaherty	Women's Lobbyist Fund	191 856	✓	
Shirley Stevens	MTA	880	✓	
Celinda Lake	Women's Lobbyist Fund	880	✓	
Billie Simmons	Self	856	✓	
Ken Largin	M.A.D.D.	540	✓	
~~R. Glen Hatsteton~~		~~856~~		✓
R Glen Hofstetter	Youth Court State P.O.	856		✓

(Please leave prepared statement with Secretary)

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 3/23/83

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.

Exhibit "A"
March 23, 1983
HB540

TESTIMONY OF: STEVE JOHNSON
Assistant Attorney General

RE: HOUSE BILL 540

The Attorney General strongly supports HB 540. If enacted, it would increase the certainty and ease of securing DUI convictions, increase the frequency of guilty pleas, and, in the long run, decrease the cost in terms of time and money of DUI prosecution. Those results have been attained in other states which have enacted similar laws.

HB 540 make two significant additions to our existing DUI statues. (1) First, it adds in section 2 a wholly new offense by making it unlawful to drive while having an alcohol concentration of 0.10 or more. "Alcohol concentration"[1/] is a defined term under the bill and refers to the weight in grams of alcohol found in either 100 milliliters of blood or 210 liters of breath or 75.3 milliliters of urine.

1/ This definition of alcohol concentration was developed in the early '70s by the National Safety Council. It was then adopted by the State of Minnesota in its DUI laws and has been incorporated into the model DUI statutes proposed in the 1979 revision to the Uniform Vehicle Code upon which HB 540 was based.

(2) Second, HB 540 makes laboratory reports showing the amount of blood present in a sample of a defendant's blood, breath or urine to be directly admissible into evidence at trial. Currently, the state incurs considerable expense in sending crime lab technicians to DUI trials in every corner of the state to testify on the amount of alcohol that they have determined to be present in a defendant's blood at the time of arrest. Present law declares lab reports to be a form of inadmissible hearsay.[2/] HB 540 makes lab reports admissible into evidence but at the same time sets strict requirements of verification of signatures and certification of laboratories performing chemical analysis in order to assure the authenticity and reliability of those reports. The net effect will be to reduce the travel time of crime lab technicians and let them devote more time to the technical job they were hired to perform.

Section 5 of the bill also requires any defendant to give ten days notice to the prosecuting attorney of an intention to call the lab technician as a witness. If the defendant does not do so, he waives any and all right to call the technician as a witness. The notice

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2/ See Rule 803(8)(i), Montana Rules of Evidence (M.R. Evid.). However, under Rule 802, M.R.Evid., the legislature may enact statutory exceptions to the rules of evidence established by the Montana Supreme Court.

provision allows crime lab personnel to budget their time more effectively and reduces the ability of a defendant to harrass the state by making untimely requests for lab personnel to appear at trial.

The new offense which HB 540 proposes to add to Montana's DUI laws is generally referred to as an illegal per se ("PS) law. This new offense would constructively supplement--not unnecessarily duplicate --our existing DUI statute. The new offense is proposed subsection (1) to section 61-8-401, MCA, under section 2 of HB 540. Traditional DUI is proposed subsection (2) to section 61-8-401. To be guilty of traditional DUI under existing law, more must be shown than the level of alcohol in one's blood while driving: It must be shown that the driver is "intoxicated," i.e., physically or physiologically impaired to an extent that his or her senses and reactions are not functioning reliably. In other words, traditional DUI is a behavior-based offense. Evidence of chemical test results showing alcohol concentration is relevant only if those results can be correlated to physiological impairment. To establish that correlation is the function of the presumptions under section (2) of the bill on pages 3 and 4.

On the other hand, the new IPS offense proposed by the bill is not based on behavior. It is a chemically-based offense. The only elements

constituting the offense are driving and a prohibited alcohol concentration as measured by means of a chemical test of the defendant's blood, breath, or urine. Evidence of behavioral impairment under an IPS statute is unnecessary and irrelevant. Accordingly, the statutory presumptions of intoxication do not apply to an IPS charge.

As of August of 1981, fifteen states had IPS statutes. More have undoubtedly been enacted since that time. They have consistently received strong support in both the lower and the appellate courts when challenged on constitutional grounds. In no case has an IPS statute ever been ruled unconstitutional on any theory.

According to a 1981 survey conducted by the National Highway Traffic Safety Administration (NHTSA), other jurisdictions have reported an increase in the frequency and number of guilty pleas to DUI following enactment of IPS statutes because those statutes are much harder to defend against than traditional DUI. If the chemical test is properly administered and shows a prohibited alcohol concentration, the defendant's only defense consists of attacking the procedural legality of his arrest or the scientific reliability of established chemical testing procedures or devices. Prosecutors have reported speedier resolution of cases and fewer trials as the result of the stronger plea bargaining

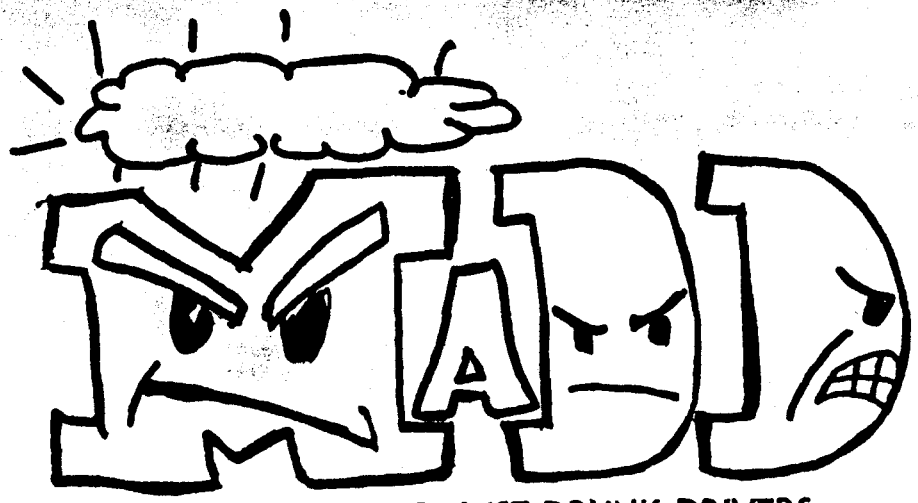
position they enjoy under IPS statutes whenever lab reports indicate a high alcohol concentration.

As a final note I would recommend a slight amendment in the presumption language of page 4 of the bill relating to a presumption of intoxication in the case of defendants with an alcohol concentration of 0.10 or greater. Under section 2 of the bill, proposed subsection (4)(c) to section 61-8-401, MCA, reads: "If there was at that time an alcohol concentration of 0.10 or more...it shall be presumed that the...person was under the influence of alcohol."

My suggested amendments are two-fold: first, specify as explained above, that the statutory presumptions under proposed subsection (4)(c) to section 61-8-401, MCA, relate only to charges under proposed subsection (2) to section 61-8-401, MCA, i.e., only to charges of traditional DUI. Second, the language of proposed subsection (4)(c) to section 61-8-401 on page 4 of the bill should explicitly state that the presumption of intoxication there provided for is a rebuttable and not a conclusive presumption. If proposed subsection (4)(c) is interpreted by the courts to be a conclusive presumption which the jury must make, the presumption is of questionable constitutionality. In Sandstrom v. Montana, 442 U.S. 510 (1979), the United States Supreme court held that a statutory presumption that could be read as a conclusive presumption of a material element

of a charged offense was unconstitutional because it "would 'conflict with the overriding presumption of innocence with which the law endows the accused...'" and would relieve the state of proving every fact necessary to constitute the crime beyond a reasonable doubt. Id. 442 U.S. at 523. The presumption of proposed subsection (4)(c) could be ruled unconstitutional under Sandstrom unless it is made clear that presumption is rebuttable by the defendant.

Exhibit "B"
March 23, 1983
HB540



MONTANAN'S AGAINST DRUNK DRIVERS
Missoula County Chapter

I am Ronald Yates, MADD leader for Missoula County. I am taking annual leave today because today you're considering legislation on a subject very dear to my heart--that of the carnage caused by the drunk driver.

Senator Halligan, in our county of Missoula last year, 1982, 12 of our 20 auto fatalities were drinking-related. 300 people were injured in accidents where one of the drivers had a blood alcohol level of 0.05 % or greater, ie. at least half of the present presumptive rate of intoxication of 0.1%

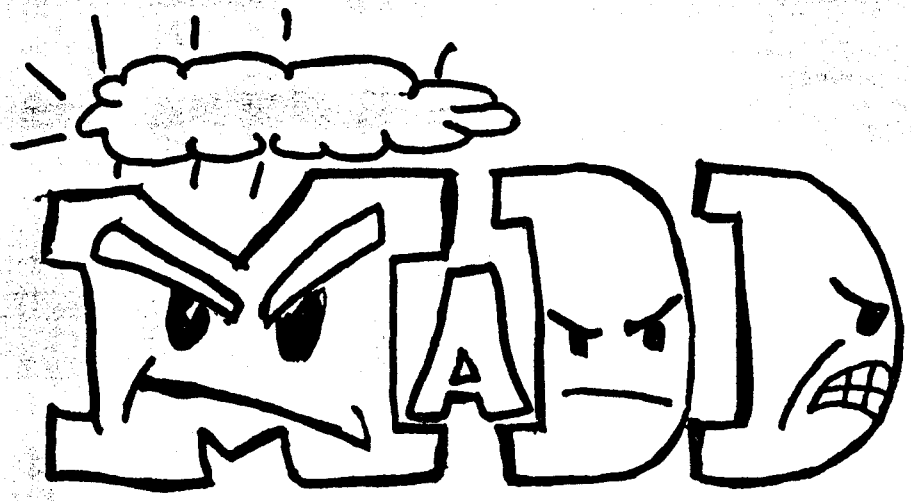
Senator Turnage, in Lake county which you represent, 9 of the 13 auto fatalittes were drinking-related(69 %). 99 people in your county were injured in alcohol-related wrecks.

Senators, these are your constituents. They depend on you to enact laws that say loud and clear--DON'T DRIVE DRUNK IN MONTANA! I realize that politically there is no one single solution to the problem. Education on the effects of alcohol on the driver, changing public attitudes on the acceptability of drinking and driving are crucial. We at MADD are doing our share, as are other groups, yet, at the same time, tough laws and law enforcement are essential to solve the problem. With no single solution, each partial solution become crucial.

HB 540 is a crucial part of the solution. There are several reasons:

1. It would greatly simplify the ease and speed of conviction of a DUI suspect whose blood alcohol content is 0.1% or greater. This is because the prosecution representing you and I would not have to show anything else to get a conviction!

2. Police officers would be more willing to pick up DUI suspects because the likelihood of getting a conviction would be greater. Presently, it's common practice for defense attorneys to delay trials. This allows their client to continue to drive a vehicle. It also serves to dull the memory of the police officer so that he appears less sure of himself when the case goes before a jury trial. (Jury trials are better for the defendant because many jurors feel hypocritical because they have drank and drove themselves.) In the trial the officers native intelligence is often challenged and he is made to look foolish. That is no motivation to pick up drunk drivers



MONTANAN'S AGAINST DRUNK DRIVERS
Missoula County Chapter

3. 0.1% is a widely accepted, even lenient,. standard for driving under the influence. The Scandinavian countries use 0.05 %, one-half of our proposed standard blood alcohol level. It has been reported in several studies that a driver at 0.1% blood alcohol level is 7 times more likely to have a traffic accident than a sober individual. Practically speaking, a 210 pound individual of my size would need to drink 6-7 beers or shots of bourbon in an hour to reach this level. Gentlemen, would you drive back to Missoula with me if I had drank that much? Would you let your son or daughter or wife?

4. Provides a uniformity of convictions across the state through the use of fair,. impartial, scientifically accepted alcohol testing machines.

5. Allows a police officer, spotting a drunk driver in a parking lot,. mall,. or other public way,. to arrest that individual. He presently can't do so unless he saw the motorist driving on a public road.

6. Plugs loopholes that most citizens are unaware even exist. Most of your constituents would be shocked to learn that a gas chromatograph reading of 0.1% does not result in an automatic conviction, or that a a policeman spotting an obviously intoxicated motorist in the parking lot of a saloon can not arrest that individual.

Please, senators, support HB 540.

Ronald L Yates

Ronald L. Yates
MADD Leader, Missoula County

Exhibit "C"
March 23, 1983
HB540

Missoula, Montana 59802

THE GARDEN CITY
HUB OF FIVE VALLEYS

March 22, 1983

OFFICE OF CITY ATTORNEY
201 West Spruce Street
Phone 721-4700
83-206

Senate Judiciary Committee Members
State Senate
Capitol Station
Helena, Montana 59620

Re: House Bill 540 - An Act Revising the Laws Prohibiting Driving Under the Influence of Alcohol or Drugs; Making it an Offense for an Individual with a Blood Alcohol Concentration of More than .10 to Drive a Motor Vehicle; Providing for the Admissibility of Evidence.

Dear Senate Judiciary Members:

I would like to express my support for House Bill 540 with 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 and a subsequent offender within a five (5) year period must have his/her driver's license suspended for one (1) year. Thus, I would urge your consideration of these amendments at page 7, line 3 of the Bill.

It is my understanding that the suggested provisions with respect to driver's license suspensions are essential to allow the State to be eligible to receive federal funds for obtaining equipment to be used in drunk driving cases and to help educate the public concerning the dangers of drinking and driving. Further, these provisions would also help serve as a deterrent to driving under the influence of alcohol; and if the individual did drive, it would serve as a deterrent to refusing to submit to a chemical test.

I would like to urge your support for an amendment to House Bill 540 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 all geographical areas of this state in addition to "highways of this state" (Section 61-8-401(1)(a), M.C.A.). I would urge reinstatement of the originally proposed language for this Bill which was "anywhere within" the state. The present Bill language "ways of the state open to the public" is still restrictive. Areas where the public would not be protected by the ability to file a D.U.I. charge pursuant to the

existing language would include parks, boulevards, school campus yards (including grade and high schools as well as college), railroad rights-of-way, private yards, undeveloped private property (fields), etc. 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 recodification of State laws to the Montana Code Annotated, it is my understanding that a very lengthy legislative bill labeled as a style change bill altered codified D.U.I. statutory language to the effect that it eliminated a prosecutor's ability to prosecute driving under the influence of alcohol offenders anywhere in the state and limited the prosecutorial power to the "highways of this state." HB 540 is a step in the right direction for the reason it will again allow the prosecution of offenders in parking lots and service stations, etc. but it does not go far enough to protect public safety and property. Ironically, a prosecutor may still prosecute anyone who operates or is in physical control of a motor vehicle while he/she is under the influence of a narcotic drug or any other drug anywhere they are found "within this state". The person under the influence of alcohol may be just as dangerous as the person under the influence of drugs.

I know from legal research I performed while State law allowed the prosecution of D.U.I. offenses anywhere in the state that many states allow prosecution of D.U.I. offenders no matter where they are located within the respective state. They use such statutory language as "anywhere in the state" or "upon the highways and elsewhere throughout the state". A person who is operating or in physical control of a motor vehicle while under the influence of either alcohol or drugs is a serious threat or danger to persons and property whether the D.U.I. offender is on a highway or located anywhere in the state. Individuals exposed to the dangers of the individual under the influence of alcohol who operates or is in physical control of a motor vehicle while under the influence of alcohol have the right to be protected as a matter of public safety from those D.U.I. offenders no matter where they are operating vehicles within this state.

House Bill 540 would also save the State Department of Justice staff time and travel expenses for the reason that it allows the admissibility of a Department of Justice laboratory analysis of blood, breath, or urine without the requirement of the necessity of the person(s) performing the test or preparing the report being there, unless the accused or his/her attorney notifies the prosecuting attorney at least 10 days before the trial of his/her desire to call the person(s).

Therefore, I would urge your support for HB 540 with your favorable consideration of the suggested amendments.

Yours truly,

Jim Nugent

Jim Nugent
City Attorney

JN/jd

STATE JUDICIARY COMMITTEE 3-23-83

Exhibit "D"
March 23, 1983
HB540

It's time to say it out loud--Drinking and driving is against the law!! Driving drunk should be a criminal offense. We have all seen road tests and alcohol studies enough to prove the fact that: NOBODY CAN DRIVE SAFELY WHEN THE BA is .1. Nobody has the coordination and ability for quick response, which driving requires, when the BA is .1. You can't learn how, get used to being.1 or grow older and get smart enough to drive safely when the BA is .1. This is a chemical problem involving body functions. It is a physiological effect which has nothing to do with basic intelligence, physical fitness nor performance. Therefore, it is time that we accept scientific facts and make it as easy as possible for the people to understand that: It is against the law. It is dangerous, stupid, expensive, irresponsible, deadly, painful! It is against the LAW! The public is losing the war against drunk drivers. Why play games with this problem. We have researched it, dissected it, philosophied about it and now it is time to use all of these statistics, studies, graphs which our behavioral and physiological research people have compiled and "Call a Spade a Spade!"

Sure, we may have all done it--are still doing it--or we have friends and family who participate in this sport--but we are all able to listen and learn. There were people who thought that the earth was flat until it was proven otherwise. After this happened, the people who were still going around pretending that the earth was flat, looked a little silly! Now, there is a lot of work to do to educate the public that their behavior must change. We can do that in two ways: Preventive Education programs which cost $ and confronting the problem which costs your vote! But here you have both. If our proposed legislation passes, our state will qualify for $200,000 in Federal money for education and prevention programs in Montana. I am here to tell you that you can make a lot of pamphlets, filmstrips, billboards and educational projects with $200,000 because we have been doing it. This is a small state and we can reach our population with $200,000. Our MADD group has been fun/ctioning like Sam Levinson stated: "We have everything but money". In the last four years, the interest in this subject has grown. There are more people in this state with the training to use that $ towards a big statement to the people. Look what technology and scientific facts have done to the acceptance of smoking! Just light up in front of any child and then get ready to listen to a little confrontation regarding your health and his. Our kids need alcohol educational programs so that they can grow up and then deal with this social habit with responsibility.

Your responsibility here as legislators is to confront the problem by taking a strong stand here. Get our law enforcement officers out of the courtroom and back on the street--or working his night shift instead of waiting outside of the courtroom all day for his turn to be put on trial. This is the most rediculous waste of man power and tax money to be paying our policemen to testify regarding the performance of a traffic offender.

The courts can argue with the stupid cop, the jury can have feelings about the "bad guy" patrolman but who can argue with the Gasgomatograph? It is not okay to drink and drive in the state of Montana anymore'!!SAY IT OUT LOUD!!!

KEN LARGIN
M.A.D.D.

Exhibit "E"
March 23, 1983
HB540

MISSOULA CITY-COUNTY
HEALTH DEPARTMENT
301 West Alder · Missoula, Montana 59802 · Ph. (406) 721-5700

TESTIMONY HB540

I am Michael Wood, M.S., M.P.H., Director of Health Education for the Missoula City-County Health Department. I represent a 30 member task force in Missoula concerned about drunk driving. We strongly support HB540.

You have already heard of the nature and scope of the drunk driving problem in Montana and the country, so I will not address those facts and figures. What I would like to do is explain why, from a public health perspective, HB540 is an important and rational piece of legislation.

HB540 would make it unlawful and punishable to drive in Montana with a blood alcohol concentration (BAC) of 0.10% or greater. What does 0.10% BAC really mean?

1) 0.10% is one one-thousandth of your total blood volume being alcohol. That is, for every 1,000 cc's of blood, there is one cc of ethanol alcohol.

2) In order to get one cc of alcohol per 1,000 cc's of blood, one must drink rapidly and heavily. For example, one of the honorable senators at this hearing today weighing 200 lbs would need to drink six beers within the next hour to get to .10%. Six 12 oz. beers. That is one beer every ten minutes, hardly social sipping. To get to .10, you need to drink fast and hard.

3) 0.10% BAC has long been established as the point at which no one can safely drive, no matter how much one thinks he/she can "hold his liquor." This has been time tested and is strongly backed by the scientific and medical communities. The America Medical Association states "... as they reach that point (0.10% BAC) or exceed it, the degree of intoxication is such that the driving skills of everyone are dangerously altered." (Source: Manual on Alcoholism, AMA, Fall, 1967)

4) State-of-the-art BAC tests, contrary to some rumors denying it, have been shown to be both reliable and accurate. If you have questions about this, I would recommend that you direct them to someone from the Department of Highway Safety, some of whom are at the hearing today.

These facts strongly argue this simple fact: 0.10% BAC is measurable and dangerous. There is no doubt about it.

Second, I would like to give some of the rationale for the proposal that driving with a 0.10% BAC be illegal per se and punishable. To start with, driving is not a right guaranteed by the Montana Constitution. Driving is simply a privilege, which is given and taken away as appropriate. Driving without a license is itself illegal per se, and punishable with a minimum of two days and a maximum of six months in jail and up to a $500 fine. Isn't it logical, then, that driving with a 0.10% BAC, a much more dangerous situation than driving without a license, also be illegal? After all, it is illegal for a blind or "incompetent" person to operate a motor vehicle. To categorically state, as HB540 does, that it is unlawful

to operate a motor vehicle with a 0.10% BAC makes good sense. Remember, driving is a privilege. If the privilege is abused, the driver should be punished.

Last, I would like to point out what HB540 would and would not do. HB540 will send a message to the public: if you are .10 driving and get caught, you will very likely be convicted; HB540 will increase the number of guilty pleas and subsequent convictions; HB540 will get more drunks off the road and into treatment; HB540 will, in the long run, reduce the carnage on Montana highways. HB540 will not deny persons due process; and HB540 will not get the unlucky social drinker (remember that the average BAC in Montana fatalities is .15% and .18% average for arrests).

HB540 is also a critical part of the DUI legislative package before the legislature. In order for SB313 and SB250 to be effective, HB540 must be passed, and vice versa, in order for HB540 to be effective, SB313 must pass along with the already passed SB250. The combination of these bills will greatly strengthen DUI laws in Montana and help with the long term solution of the problem. The additional incentive to passing these bills is, of course, a large federal grant program to educate the public about these laws and how to prevent drunk driving.

You will be taking a giant step forward for the people of Montana if you pass HB540. We thank the committee for its support on the other DUI bills, and urge you to finish the job by supporting this one.

Thank you.

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

ROBERT L. DESCHAMPS III
COUNTY ATTORNEY

Exhibit "F"
March 23, 1983
HB540

Betty Wing
Deputy County Attorney
MISSOULA COUNTY

Proponent of House Bill 540

House Bill 540 makes it an offense for a person to drive a motor vehicle while the alcohol concentration in his blood, breath or urine is .10 or more.

The .10 alcohol concentration level has been well accepted by the states as the level at which driving is significantly impaired in all people. Based upon scientific studies and accepted medical knowledge, the American Medical Association recommended the .10 figure as the level rendering a person too intoxicated to drive. The AMA found that as the alcohol concentration reaches or exceeds .10, the degree of intoxication is such that the driving skills is dangerously altered.

The Montana DUI law is governed by the Cline doctrine from the Montana Supreme Court case of State v. Cline, 135 Mt. 372, 339 P.2d 657 (1959). Under the Supreme Court ruling, the law in Montana is as follows:

> "The expression 'under the influence of intoxicating liquor' covers not only all the well-known and easily recognized conditions and degrees of intoxication but any abnormal mental or physical condition which is the result of indulging into any degree of intoxicating liquors and which tends to deprive him of that clearness of intellect and control of himself which he would otherwise possess. If the ability of the driver of an automobile has been lessened in the slightest degree by the use

of intoxicating liquors, then the driver is deemed to be under the influence of intoxicating liquor. The mere fact that a driver has taken a drink does not place him under the ban of the statute unless such drink has some influence upon him, lessening in some degree his ability to handle said automobile."

I would like to emphasize that the law requires only that driving ability be "lessened in the slightest degree." We are accustomed to talking about drunk drivers but a driver does not have to be drunk to be guilty of DUI. He only has to be sufficiently under the influence to affect his judgment and driving ability. The AMA has found that at .10 any person has reached that level.

House Bill 540, therefore, is consistent with Montana law in prohibiting driving with a .10 alcohol concentration.

Similar statutes have been passed in other states and have been upheld by state courts. Oregon's statute was upheld in 1979 in State v. Clark, 286 Or. 33, 593 P.2d 123 (1979). Utah's statute was held constitutional in Greaves v. State, 528 P.2d 805 (1974).

All of us want to prevent the death and injury which drinking and driving cause. This bill will aid in that effort.

I would like to add my support for the portions of the bill allowing alcohol concentration reports into evidence and requiring advance notice for calling lab personnel as witnesses. The Montana Crime Lab has an impossible burden in doing the analysis for DUI's and traveling throughout the state testifying at DUI trials. Any effort to lighten that burden is desirable.

Please support House Bill 540.

(This sheet to be used by those testifying on a

Exhibit "G"
March 23, 1983
HB191

NAME: Stacy Flaherty DATE: 3/23/82

ADDRESS: P.O. Box 1099

PHONE: 449-7917

REPRESENTING WHOM? Women's Lobbyist Fund

APPEARING ON WHICH PROPOSAL: HB191

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

COMMENT: The Women's Lobbyist Fund, a coalition of women's groups in Montana, endorses HB191.

Under current law, Montana is an equitable distribution state for purposes of divorce proceedings. A Court equitably apportions between the parties involved the property and assets belonging to either or both parties. The law also recognizes the non-wage earning contributions of a homemaker and instructs the Court to consider the health, age, occupation, amount and sources of income, employability, etc. of each party. Property transferred in divorce proceedings may be taxable under current law.

HB191 further strengthens the equitable nature of the existing law by removing the tax consequences resulting from transfers of property in divorce proceedings.

The Women's Lobbyist Fund believes this bill is fair and just to both parties involved in divorce proceedings.

I urge do pass on HB191

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Exhibit "H"
March 23, 1983
HB880

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917

TESTIMONY OF CELINDA C. LAKE, WOMEN'S LOBBYIST FUND, IN SUPPORT OF HB 880

The Women's Lobbyist Fund Supports HB 880 calling for reporting of elderly abuse. Abuse of the elderly is not a localized problem. It is a problem that Montana like other states has largely ignored, but it is a problem equal in magnitude to child abuse and spouse abuse -- two areas which we have begun to deal with in terms of reporting, crisis intervention, and protective services. HB 880 is an important step toward acknowledging and dealing with the problems we have with elderly abuse. Sixteen other states have reporting laws like this.

According to UCLA's Center for Gerontological Studies, 4% of the nation's elderly are physically abused and six times that are financially, verbally, or psychologically abused. The incidence of physical abuse of the elderly is as high as the incidence of physical abuse of children. Victims of elderly abuse are often as dependent on their abuser as victims of child abuse. According to Souza's report on Elder Abuse, 77% of victims of elder abuse are moderately to totally dependent on their abuser as a caregiver. Incidents of elderly abuse are badly underreported because the victims are often ashamed, isolated, and scared of being institutionalized and because the abusing situations usually involve family members and the family unit.

Most elderly abuse victims are single, female, over 75, and with a disability which makes them even more dependent on their caretaker. Abusers are generally relatives upon whom the elderly person is dependent for personal care, shelter, and support.

The premise of reporting laws like HB 880 is that victims of elder abuse are often as vulnerable and dependent as the children whom we have protected by similar laws. Our elderly need the extra societal protection of these kinds of laws. We would encourage this committee to pass HB 880.

Exhibit "I"
March 23, 1983
HB880

MONTANA SENIORS' ADVOCACY ASSIS'

P.O. Box 232 • Capitol Station • Helena, Montana 59620
(406) 449-4676

DOUGLAS B. OLSON, Attorney

March 23, 1983

Senators
Senate Judiciary Committee
48th Legislative Session
Capitol Station
Helena, Montana 59620

re: House Bill 880

Dear Chairman Turnage and Committee Members:

Montana Seniors' Advocacy Assistance (MSAA) is responsible under a grant from the federal Older Americans Act for improving legal rights and protective services for senior citizens. On a national level we hear and read stories of the elderly being abused, neglected or exploited more frequently than we would imagine possible. Such abuse, neglect and exploitation does also occur in Montana as well but the extent to which it occurs is unknown due to no established reporting system at the present time. The persons who often are the abusers are family members, neighbors or strangers.

What needs to be done to alleviate or eliminate such abuse? Montana needs to have a requirement that mandates that those individuals who are in the best position to notice or suspect that an elderly person is being abused, neglected or exploited file a report with our welfare and law enforcement agencies. Such a requirement is not without precedent for many states now have laws requiring reporting of suspected cases of elder abuse, and most states require reporting of suspected cases of child abuse. Once a report of a suspected case is received, an investigation can be undertaken by trained social workers and where warranted protective services offered and/or referrals made to law enforcement officials if criminal laws may have been violated.

House Bill 880 sponsored by Rep. Bergene and 35 other legislators would if enacted into law provide Montana's elderly population with the same protections that are afforded to children who may be abused. The bill as originally introduced was amended on the floor of the house to make it more closely resemble Montana's child abuse laws found in Title 41, Chapter 3, MCA. The Bill as it comes to the Senate does not do everything that MSAA would like to see in this type of a bill but it is a good start. We supported before the House Human Services Committee strong sanctions or penalties against those who would cause an elderly person to suffer physical or mental injury especially in those cases involving neglect or exploitation not covered by the present criminal laws for assault. It was the opinion of the House that at this time this legislation should not include added criminal penalties and MSAA is willing to accept the House's judgment for the next two years.

This bill will provide for confidentiality of reports of suspected cases of abuse to protect the identity of the reporter as well as to protect the rights of suspected abusers until an investigation can be completed. In addition, this bill will enable Montana to compile more accurate statistics as to the frequency and type of cases in Montana regarding the abuse, neglect and exploitation of our senior citizens.

There was no opposition to this legislation in the House and I can not think of any segment of our society that is not more deserving of such legislation than the frail and dependent elderly. I strongly encourage your support of House Bill 880 and would be happy to answer any questions the Committee may have.

It has come to our attention that an amendment may be offered by representatives of the nursing home industry that if a complaint or report is made that suspects one of their employees of abuse of a resident of one of their facilities that the nursing home be given a copy of the report. We would strongly oppose amendment of House Bill 880 to incorporate this proposal. The bill as presently drafted correctly limits access to these reports to welfare and law enforcement officials. If an employee of their facility is suspected of abusing an elderly resident, that facility will learn about it when the report is being investigated if the facts warrant their involvement.

Thank you for an opportunity to comment on House Bill 880.

Sincerely,

Douglas B. Olson

Douglas B. Olson
Attorney
Montana Seniors' Advocacy Assistance

Exhibit "J"
March 23, 1983
HB856

(This sheet to be used by those testifying on a

NAME: Stacy Flaherty DATE: 3/23/83

ADDRESS: Box 1099, Helena

PHONE: 449-7917

REPRESENTING WHOM? Women's Lobbyist FUND

APPEARING ON WHICH PROPOSAL: HB856

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

COMMENT:

The Women's Lobbyist Fund supports HB856 because it allows an adolescent the flexibility needed to cope with difficult family situations as mentioned in the bill.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

March 23, 19 83

MR. President

We, your committee on Senate Judiciary

having had under consideration House Bill No. 684

Ramirez (Crippen)

Respectfully report as follows: That House Bill No. 684

~~DO PASS~~

BE CONCURRED IN

JEAN A. TURNAGE Chairman.

STATE PUB. CO.
Helena, Mont.

J.C

STANDING COMMITTEE REPORT

March 23, 19 83

MR. President

We, your committee on Senate Judiciary

having had under consideration House Bill No. 24

Keyser (Mazurek)

Respectfully report as follows: That House Bill No. 24

be amended as follows:

1. Statement of Intent, Page 2.
Following: line 17
Insert: "The department should also develop plans that inform youth courts about budgeted amounts available for placements during the fiscal year within the limits of appropriations. The department will on a regular basis advise the youth courts on the status of such budgeted amounts. Payment for placements will be in accordance with 41-3-104."

2. Page 10, line 1.
Following: "[section 7]"
Insert: "or into a home approved by the court"

~~DO PASS~~

And, as so amended,
BE CONCURRED IN

JEAN A. TURNAGE
Chairman.

STATE PUB. CO.
Helena, Mont.