MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 19, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Tuesday, March 19, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Reps. Brown and Krueger who were excused.

CONSIDERATION OF SENATE BILL NO. 331: Senator B.F. "Chris" Christiaens, Senate District #17, chief sponsor of SB 331, told the committee that this bill was introduced at the request of the Human Rights Commission. This bill will permit private enforcement of orders of the Human Rights Commission and clarify the authority of the district court when enforcing an order of the Commission. Under present law, if the Commission issues an order in a contested case and one of the parties refuses to comply, the Commission staff is required to bring an action to enforce the order. Passage of this bill will relieve the staff which is really very small at this particular point, and it will allow people to go ahead and collect on the judgment due them without having to go back through the Commission in order to have the order enforced.

Karl Englund, representing the Montana Trial Lawyers' Association, testified as a proponent. He said that he has worked with the Human Rights Commission on a number of cases. One of the frustrating parts of the process is the fact that it is a very slow process. Most cases involved a rather lengthy fact finding on the part of the Commission. By the time the Commission has investigated a particular case and found reasonable cause to believe there is discrimination, the case has then gone to the full Commission for a contested case hearing. This bill will relieve the Commission of some of the duties and therefore, make their staff better able to do some of the things that only they can do.

Anne L. MacIntyre, administrator of the Human Rights Division, testified in support of the bill. A copy of her written testimony was marked Exhibit A and attached hereto.

There being no further proponents or opponents, Senator Christiaens closed.

The floor was opened to questions.

In response to a question asked by Rep. Rapp-Svrcek, Ms. MacIntyre said the Commission filed only three enforcement orders in the past year.

Rep. Keyser asked Sen. Christiaens where the definition of "or a party" came from. Sen. Christiaens said his interpretation of a "party" could mean a person or an individual. Ms. MacIntyre said the two sections that are at issue here and that they are asking to be amended are part of the statutory scheme that refers to the handling of cases before the Commission. It is pretty clear within that scheme that a party is a party to the case actually before the Commission. She informed the committee that during a discussion in the Senate Judiciary Committee, the committee did not feel there were grounds to argue that a party is anyone other than a party to the case. Rep. Keyser wanted to know the section of law that defines what a party is. Ms. MacIntyre said the word "party" is not defined in any other section. But, she thinks the other provision in part 5, title 49, chapter 2 and part 3 of title 49, chapter 3 -- it is pretty clear that we are dealing with the wording of the case all the way through the commission process. Rep. Keyser wanted to know if the word "claimant" is used in there too. Ms. MacIntyre said she doesn't think it is.

Rep. Hannah asked if he, as a claimant, wanted to file a case, may he go directly to district court or must he go through the Commission. Ms. MacIntyre said no, a claimant may not go directly to the district court. The statutory remedy that is set forth appears to be an exclusive remedy, so the claim must be filed through the Commission. Rep. Hannah asked if he filed his complaint with the Commission and he ended up unhappy with the Commission's decision, then may he go to district court? Ms. MacIntyre said "yes." She said there is a two-stage process which she further expounded on. In response to another question asked by Rep. Hannah, Ms. MacIntyre said that if an individual has a hearing before the Commission and the Commission issues an order, and that order is appealed to district court for judicial review, the district court will review what the Commission has done to determine whether the Commission acted properly in making its decision -- but the court will not try the matter on its merits.

In response to a question asked by Rep. Mercer, Ms. MacIntyre said it was her opinion that unless an individual (who is involved with a case and questions the Commission's decision) seeks judicial review of the Commission's order that the person either stops from relitigating the case in an enforcement proceeding.

Rep. Mercer said another problem he had is that it seems to him that the court is not being granted any specific authority. You are not telling the court how to decide what it is supposed to do. There is no operative language in this particular section. Ms. MacIntyre said it is important that there be some sort of enforcement scheme in place. Unlike a court, the Commission cannot enforce its own orders. She feels that it may not be necessary to spell out the exact authority of the court. The court assumes if the Commission has issued an order, and that

order has not been appealed, it would be proper for the court to comply with the request for enforcement.

There being no further questions, hearing closed on SB 331.

CONSIDERATION OF SENATE BILL NO. 327: Senator Bob Brown, Senate District #7, testified as chief sponsor on behalf of SB 327. This bill is an attempt to deal with the problem of people who illegally pass school buses. He said this is one of the largest problems in Montana today in the area of school safety. Senator Brown said that when Rep. Eudaily researched this issue during the last session, he found out that there was one school district that reported 10 or 12 cases of this type of problem every week. It is a common problem, and it is a very difficult problem to do anything about due to the difficulty of identifying the drivers of those vehicles. Under this bill, the owner of a vehicle would be held responsible for the violation and would be penalized accordingly. He feels the bill may provide a deterrent, also.

Rep. Richard Nelson testified as a proponent on behalf of the transportation director for School District #6 in Kalispell and the school superintendent of the Kalispell school district. He said there have been numerous close calls in this area in the Kalispell region. He feels that it is certainly proper for the owner of the vehicle to be held responsible for the actions of those who he allows to use the vehicle. He informed the committee that just recently he personally witnessed a scene when a car passed a school bus with flashing lights.

Rick Bartos, representing the Office of Public Instruction, testified as a proponent. He said that they have been attempting for many years to rectify this problem. He said that this particular legislation has probably gone through more scrutiny than most legislation. He said his office has been working closely with the Attorney General's Office in developing the language in the bill. There are three key elements that should be looked at that will ensure due process and fairness if there is a question of review in court. First, is the amendment the Senate put into the bill that indicates there will be no prosecution unless the identity of the driver is unknown. The second key provision is the punitive area in which the person, if he is convicted of this particular offense, will serve no jail term -- it is simply a monetary fine up to $500. Finally, the supreme court has said in traffic regulation, the legislature has the ability to use their discretion. The supreme court gives great deference to that discretion. This particular piece of legislation deals with traffic regulation.

Terry Brown, specialist for Pupil Transportation Safety, Office of Public Instruction, testified in support of the bill. He spoke on behalf of all the school bus drivers of the state of Montana who have an ongoing problem of giving positive

identification of the individual who violates the law. A copy of his written testimony was submitted, marked Exhibit B and attached hereto.

Cliff Steel, director of transportation for School District #1 of Butte, testified in favor of the bill. He feels this legislation is a great step forward in the attempt to solve a serious problem and make the public more aware of problems in this area. He said it has always been a problem of the driver of the bus to identify the driver of the vehicle who illegally passes the bus. In addition, there are strict state and federal standards for school bus construction. The greatest problem, however, is when the children are loading and unloading at bus zones.

George Hall, manager of Hall Transport in Helena, testified in support of the bill. Darlene Cashman, Hall Transport in Great Falls, also spoke in favor of the bill.

Chip Erdmann, representing the School Boards Assocaition, believes this is a significant problem that needs to be addressed. He said there is no effective way in which to enforce this statute. He said that a workable law is needed in order to provide an effective remedy to deal with the problem. He believes that SB 327 provides that remedy.

Jess Long, a school administrator in the state, urged the committee to pass SB 327.

There being no further proponents or opponents, Senator Brown closed. Senator Brown pointed out that many other states have adopted this type of legislation. Again, he said that this legislation attempts to solve a major safety problem.

Rep. Gould asked Senator Brown why the bill didn't include an effective date. Senator Brown said there is an unwritten rule in the Senate where they don't include effective dates; however, he didn't have any objection to placing one in the bill.

Rep. Eudaily said the problem they had with this legislation in the last session was that some charged it to be unconstitutional.

Rep. Mercer said that it is necessary that no jail time be given in order for it to be constitutional. Rep. Mercer had a question pertaining to a person who is labeled an habitual traffic offender. He said that if the offender gets enough points, that person will probably be put in jail eventually. Mr. Bartos pointed out that if any amendments are made to the bill, it will probably jeopardize the bill's chance for passage - and again they will be faced with this problem for another two years.

In response to a question asked by Rep. Addy, Mr. Bartos said that when the bill originally came before the Senate Judiciary Committee, they kept the word accountability placed in which seems to pass constitutional muster. Sen. Towe was more comfortable with this presumption -- this prima facie language. The committee members also read the City of Missoula v. Shea case and found that it wouldn't survive any constitutional challenge. Also, on top of that is the identification of the owner of the car and the penalty involved. Rep. Addy asked if it was Mr. Bartos' stand that it is a little safer to make a presumption here because you require establishing the identity of the driver as one of the elements of the offense. Mr. Bartos replied "absolutely."

There being no further questions, hearing closed on SB 327.

CONSIDERATION OF SENATE BILL NO. 328: Senator Bob Brown, Senate District #2, testified as SB 328's chief sponsor. This bill is an act to amend the exculpatory clause protecting medical personnel from suit for damages when drawing blood for blood alcohol tests. He said this is a relatively new problem for hospitals and hospital personnel -- they have never taken blood from anyone involuntarily until fairly recently when a recent supreme court case entitled State v. Thompson - the defendant in this case involuntarily had blood taken from him. This whole issue of a deep concern for hospitals, and hospital personnel may not necessarily be doctors and nurses. The change on page 2, (4) just broadens the exculpatory section of the laws.

Chadwick Smith, representing the Montana Hospital Association, testified as a proponent. He said this is one of the most important bills that the hospital industry supports this particular legislative session. This particular legislation was introduced becasue of a recent supreme court decision, January 12, 1984. A copy of that decision was submitted and marked Exhibit B-1. Prior to the case, there was no problem with regard to the handling of an individual brought into the hospital by an arresting officer for a suspected DUI. If the person resisted taking a blood test, he was not forced to do so. Mr. Smith pointed out that doctors and nurses do not do these blood tests; they are done by lab technicians and these technicians should be protected. This legislation would protect these people. It would also solve additional problems with the insurance as far as liability goes. He informed the committee that a lab technician did testify before the Senate Committee and told them of the problems the technicians face in this area.

There being no further proponents or opponents, Senator Brown closed.

Rep. Miles asked about the flipside of this issue. Is the person from whom the blood is taken immune from the technician charging him with liability? Mr. Smith said no, this amendment only has to do with the section 61-8-405.

Rep. Addy said he feels the "without consent" language is a lot broader than "without resistance". He wonders if we haven't taken the exclusion of liability and tracked it down to only those cases where negligent homicide or homicide is suspected. Mr. Smith said the word "proper" was initially taken out -- now "proper" has been put back in on line 11, page 2. He said that now we are talking about exculpatory only as a result of any resistance offered by the suspected person. He said that is the difference.

Rep. Eudaily said there is no statement of intent -- there is no extension of anyone's authority in here. He wanted to know if it was needed. Mr. Smith said this is not new material but subsection 6 has already been in the law. He said they didn't feel that this was anything that needed to be addressed in amendments to this statute.

In response to another question asked by Rep. Addy, Mr. Smith said the possible criminal liability for overcoming resistance would be assault. Rep. Addy asked Mr. Smith if there is an assault anytime there is a non-consentual subject. Mr. Smith said yes, that technically, it would be an assault, but it would not be an actionable assault.

There being no further questions, hearing closed on SB 328.

CONSIDERATION OF SENATE BILL NO. 322: Senator Tom Towe, Senate District #46, sponsor of SB 322, testified. This bill addresses the subject that he has been working on for a long time. He believes that they finally have a general, worked-out, agreement solution. This bill addresses the question of pre-judgment interest in a little different fashion than it has been in the past, and he feels this solves the problem. The bill says that there shall be 10% on any claim for damages that are capable of being made certain by calculation. Interest on the claim doesn't accrue until 30 days after the claim has been filed. So, the company has 30 days in which to evaluate. It does not apply to the damages not capable of being made certain. Future damages would be excluded along with others as further illustrated in the bill. Senator Towe pointed out that the insurance companies have been working with him on this particular piece of legislation.

oger McGlenn, Executive Director of the Independent Insurance Agents Association of Montana, testified. He said the association has been opposed to virtually every pre-judgment inter est bill in previous legislative sessions. However, they feel SB 322 is a responsible bill.

Karl Englund, representing the Montana Trial Lawyers' Association, spoke in favor of the bill. He said that presently 22 states and the District of Columbia have some form of pre-sentence interest fees. There is now a bill in the U.S. Congress to allow pre-judgment interest in federal courts. He said because of the efforts of Sen. Towe and the independent insurance agents, we have been able to introduce a bill which answers some of the legitimate concerns that the opponents to some of their bills had before. He feels this bill is a good compromise, and he urged the committee to support it.

Bonnie Tippy, representing the Alliance of American Insurance, feels this is the particular end product that they have agreed to, and she hopes this legislation will not be amended in any of the succeeding legislatures.

There were no further proponents or opponents.

In closing, Senator Towe pointed out that this is a subject that needs to be addressed. He said that in present cases, it is to the advantage of insurance companies not to settle a case quickly since they do not have to pay interest on a tort. Sen. Towe feels that is one of the reasons that punitive damage claims are so high.

QUESTIONS FROM THE COMMITTEE: Rep. Keyser said it still seems like this bill is one-sided -- it deals all with the claimant with no protection whatsoever for the other side. Everything here deals with the prevailing claimant. Rep. Keyser asked what Mr. McGlenn would do in a case where a lot of money was involved and yet there wasn't really a clearly defined liability as far as who was at fault. Rep. Keyser wanted to know why Mr. McGlenn is supporting a bill that is so one-sided. Mr. McGlenn felt in representing their clients that in a litigated case which drags out for a period of time, if, in fact, the insurance company is liable for those expenses, there may be interest accruing on the medical bills and the out-of-pocket expenses that the insured is suffering. In that case, we feel that our client is possibly being indemnified. On the other hand, in litigated cases there is a whole spectrum of claims being made -- in the cases of the non-income damages -- that is not adversely affecting insurance companies and thereby affecting the policy holders by increasing the cost. In some cases, we feel the option is there for the insurance companies to pay that underlying claim without admitting negligence for the additional non-economic expenses.

Rep. Keyser asked what the next step will be for the proponents of this bill. Mr. McGlenn said that in their opinion, there was a form of pre-judgmental interest coming. If not this session -- the next session. We also felt that from their position in representing their clients, that this compromise is

in the best interest of our clients. He further stated that they will become upset if any disapproving changes are made in regard to this bill next session.

Rep. Mercer said he doesn't see any tie between the claim and what a person is actually recoving in this bill. Rep. Mercer asked if interest shouldn't be accrued on the claim but rather on the damages actually received. Sen. Towe said that a person is going to collect entirely on that portion received in actual damages.

Rep. Keyser followed up with some of the questions that Rep. Mercer had. He asked Sen. Towe if he was saying that the language on line 14, page 1, that says "capable of being made certain by calculation" will take care of any amount of total claim that is filed. In other words, if too much claim is filed way above of what the injuries will prove or can be shown, or what the hospital bills reveal that can be calculated -- that the language will take care of that problem. Sen. Towe answered, "Yes, I think very definitely it will." He said that you must add to the fact that if the insurance company legitimately objects and goes through litigation and the jury finally says, "Well, here you claimed $100,000 and you are right as to $86,000, but you have $14,000 that doesn't have anything to do with this accident" -- they shouldn't have to pay interest on the $14,000 but they should have to pay on the $86,000 because somebody is out that money and that is what they bought that insurance for.

There being no further questions, hearing closed on SB 322.

EXECUTIVE SESSION:

ACTION ON SB 327: Rep. Cobb moved that SB 327 BE CONCURRED IN. The motion was seconded by Rep. Hammond and discussed.

Rep. Addy said he doesn't know if this legislation is constitutional. He said that we say that there is prima facie case established when the driver of a vehicle cannot be identified.

Rep. Hannah said that the bottom line is that there is a serious problem that needs to be dealt with, and he feels this bill will provide some sort of solution.

Rep. Gould said he would like to see the bill effective immediately because of the problem that exists. We will also find out if it is constitutional.

Rep. Keyser pointed out that if an amendment is placed in the bill, it may be re-tinkered with in the Senate. He would rather see the bill come out on the House floor as is because, at least the bill will become a law. At this late stage in the session, he sees problems with placing an amendment on the bill.

The question was called, and the motion carried unanimously. Rep. Eudaily will carry the bill.

ACTION ON SENATE BILL NO. 322: Rep. Addy moved that SB 322 BE CONCURRED IN. The motion was seconded by Rep. Hammond and discussed. Rep. Eudaily said he still has a problem with the part of the bill that he feels says that the 10% interest rate is only going to apply to what the claimant perceives as damages. Rep. Eudaily doesn't think this bill says that and doesn't have any solution for fixing it. Rep. Addy said that in reading the first section of the bill, the person is not entitled to any interest unless they are the prevailing claimant in an action for recovery of an injury.

Rep. Mercer said that Rep. Addy just disclosed another problem that he sees now. He said that just because a person is a prevailing claimant doesn't mean he is going to get everything he claims that he was entitled to. This says that you get the interest on your claims on the amount actually received. Rep. Mercer suggested that the following be added onto the end of section 1: "Interest accrues only to the extent damages claimed are actually awarded."

Rep. Hannah pointed out that there has been a real effort made on the part of all the parties involved to work out the language in a manner that is acceptable to all sides. Rep. Hannah said that while he is not opposed to an amendment to clarify this, he feels that perhaps action on this bill should be postponed. He said that if an amendment is placed on the bill now that may have a domino effect in another area, the amendments should be reviewed by the interested parties before the bill is passed onto the floor.

Following further discussion, Rep. Addy suggested that page 1, line 13, be amended by striking claim and inserting "judgment". However, it was agreed among the committee that action on SB 322 be postponed.

ACTION ON SENATE BILL NO. 328: Rep. Keyser moved that SB 328 BE CONCURRED IN. The motion was seconded by Rep. Hammond and discussed.

Rep. Addy said the fear he has with the bill is that we are narrowing the exemption from civil and criminal liability rather than expend the way it is worded. He said every place between consent and being charged with homicide, we may be eliminating the immunity from liability. It just seems to him that we are giving a pretty good argument just based upon the discretion of the whole statute. Rep. Addy requested that action on the bill be postponed until he can further talk with Mr. Smith about this bill.

Rep. Keyser said that §61-8-405, MCA, deals only with the physician or registered nurses act being at the request of the peace officer. They have only stricken "under the supervision direction of a physician or nurse acting within the scope of such person's competence." Wouldn't proper administering basically be within the scope of their compentency?

Rep. Addy said that he would argue if he were representing a client in this situation that proper means consentual. By putting the second sentence on, we really narrow the scope of the first sentence.

Without objection, action on this bill will be postponed.

ACTION ON SENATE BILL NO. 331: Rep. Cobb moved that SB 331 BE CONCURRED IN. The motion was seconded by Rep. Montayne.

Rep. Mercer moved to adopt the amendments submitted by Anne MacIntyre at the hearing. The motion was seconded by Rep. Keyser and carried unanimously. (See standing committee report for those amendments.)

Rep. Darko moved that SB 331 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Bergene.

Rep. Keyser said that he didn't like the language on line 16 of the bill, "or a party". He feels this leaves it wide open and feels that it is too broad.

The question was called, and the motion carried with Reps. Hannah and Keyser dissenting. Rep. Connelly will carry the bill.

ACTION ON SENATE BILL NO. 89: Rep. Mercer moved that SB 89 BE CONCURRED IN. The motion was seconded by Rep. Darko. Rep. Mercer moved to amend SB 89 by incorporating the "gray bill" which was marked as Exhibit C and attached hereto. The motion was seconded by Rep. Gould. Rep. Mercer explained to the committee the changes that were incorporated into the "gray bill".

Rep. Addy feels that the gray bill may do exactly the opposite of what the original bill does.

The question was called on the motion to adopt the amendments as made on the gray bill, and it carried on a voice vote. Rep. Darko further moved that SB 89 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. O'Hara.

One of the committee members wanted to know if Sen. Mazurek was contacted and apprised of these amendments. Rep. Mercer said that he had consulted with Sen. Mazurek and the Senator had no problems with the amendments.

The question was called, and the motion passed unanimously. Rep. Mercer volunteered to carry the bill.

RECONSIDERATION OF SB 230: SB 230 was rereferred back to House Judiciary Committee. There was a concern expressed on the floor that should a situation occur in a small town when someone obtained a job following the Attorney General's ruling concerning the nepotism statute. There was some question as to whether the bill addresses a possible violation of the nepotism law.

Rep. Addy doesn't know if the problem is solvable. He said that we may run into an equal protection problem if this law is not applied to all situations. He said that he would prefer to not amend the bill in any way.

Rep. Keyser moved that SB 230 BE CONCURRED IN. The motion was seconded by Rep. Darko.

Brenda Desmond, staff attorney and researcher, explained the history connected with the bill. She suggested that the committee may want to add a new section to the bill.

Rep. Hannah asked if the bill, the way that it is written, will solve the problem, or will the Attorney General tell the legislature to be more specific in the next legislative session.

Rep. Keyser said he was left with the understanding that the Attorney General's Office thought the bill was okay as is. Rep. Keyser moved that a new section be added to the bill which would clarify the intent of the legislature on this issue. The motion was seconded by Rep. Bergene.

Rep. Mercer doesn't feel that a new section is warranted. He feels that the legislature should mean what it says in the statute and not require a statement of intent for each piece of legislation.

Rep. Keyser withdrew his motion to amend because he is comfortable with the bill as is.

The question was called on the BE CONCURRED IN motion, and it passed with Rep. Cobb voting "no". Rep. Keyser will carry the bill.

RECONSIDERATION OF SB 105: Rep. Mercer explained that SB 105 was rereferred back to committee because both Reps. Kitselman and Ramirez had problems with the bill on the floor. Rep. Miles pointed out that the opponents of the bill didn't want any language in the bill referring to health care costs.

It was Rep. Hannah's opinion that SB 105 will not solve the problem it is intended to solve. He wanted to see if the committee wanted to amend the bill somehow so that it might cut down on the area of potential conflict.

Rep. Rapp-Svrcek suggested the bill be amendd on page 2, line 17 by striking "MAY" and inserting in lieu thereof "MUST". Rep. Mercer said that amendment wouldn't work if based on a default situation.

Rep. Miles feels the subject matter of SB 105 is very important, and she would really like to get the bill back on the floor for further debate.

Rep. Hannah made the comment that he is very frustrated with people who don't take this responsibility to care for their children.

Following further discussion, Rep. Miles moved that SB 105 BE CONCURRED IN. The motion was seconddd by Rep. Hammond and carried on a voice vote. Rep. Miles agreed to carry the bill.

ADJOURN: A motion having been made and seconded, the meeting adjourned at approximately 11:30 a.m.

Tom Hannah
REP. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/19/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)			✓
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger			✓
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

MARCH 19 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE BILL Bill No. 89

THIRD BLUE reading copy (color)

REVISING LAWS RELATING TO GARNISHMENT OF PERSONAL SERVICES EARNINGS

Respectfully report as follows: That SENATE Bill No. 89

BE AMENDED AS FOLLOWS:

1. Page 1, line 11.
Following: "the"
Strike: "The"
Insert: "Except as provided in subsection (2), the"

2. Page 1, line 13.
Following: "rendered"
Strike: "at any time within"
Insert: "during the"

3. Page 1, line 14.
Following: "45"
Strike: "45 days next preceding"
Insert: "45-day period prior to"

DO PASS

CONTINUED

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

March 19 19 35

4. Page 1, line 16.
Following: "exempt"
Strike: ", subject" through "that the" on line 18
Insert: "to the extent such"

5. Page 1, line 19.
Following: "for the"
Strike: "use"
Insert: "support"

6. Page 1, line 19.
Following: "family"
Strike: "supported" through "labor"

7. Page 1, line 21.
Following: "(2)"
Insert: "(a) No earnings are exempt unless the judgment debtor complies with [section 2]. (b)"

8. Page 1, line 21.
Following: "Earnings"
Strike: "for personal services"

9. Page 1, line 22.
Strike: "subject" through "upon" on line 23.
Insert: "exempt under this section from"

10. Page 1, line 25
Strike: "and is satisfy"
Insert: "only to the extent allowed by 15 U.S.C. 1673. (c) One-half of earnings are not exempt for"

11. Page 3, line 8.
Following: "the"
Strike: "use"
Insert: "support"

Following: "family"
Strike: "supported" through "labor" on line 9
Insert: ". The affidavit must include the address of the judgment debtor or his attorney for purposes of service of notice under subsection (2). Levy of execution of judgment is automatically stayed by the filing of an affidavit"

12. Page 3, line 11.
Following: "shall"
Insert: "immediately mail a copy of the affidavit to the judgment creditor and,"

Following: "CREDITOR"
Insert: ","

CONTINUED

Chairman.

March 19 19 85

13. Page 3, line 14.
Following: "shall"
Strike: "immediately"

Following: "mail a"
Strike: "copy of the affidavit and"

14. Page 3, line 15.
Following: "to the"
Strike: "party" through "STAYED" on line 17
Insert: "parties"

15. Page 3, line 18.
Following: "(3)"
Strike: "The sheriff" through "AFFIDAVIT" on line 21.
Insert: "Following the hearing on the affidavit, the court shall remove the stay, order the stay extended, or remove the stay to the extent of nonexempt property"
Renumber: subsequent subsections

sb29
pr2/kjp

AND AS AMENDED,
BE CONCURRED IN

STATE PUB. CO.
Helena, Mont.

REP. TOM HANNAH Chairman.

STANDING COMMITTEE REPORT

March 19 19 85

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 105

Third reading copy (blue)
color

HEALTH INSURANCE COVERAGE IN CHILD SUPPORT ORDERS

Respectfully report as follows: That Senate Bill No. 105

BE CONCURRED IN

DO PASS

REP. TOM HANNAH
Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 19 19 85

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 230

Third reading copy (Blue color)

MARITAL STATUS A LEGITIMATE CRITERION WHEN REQUIRED BY NEPOTISM LAW

Respectfully report as follows: That Senate Bill No. 230

BE CONCURRED IN

DO PASS

REP. TOM HARMAN Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 19 19 85

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Bill No. 327

Third reading copy (Blue color)

PRESUMPTION AS TO OWNER OF CAR THAT ILLEGALLY PASSED STOPPED SCHOOL BUS

Respectfully report as follows: That Senate Bill No. 327

SE CONCURRED IN
~~BE PASS~~

REP. TOM HANNAH, Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 19 19 85

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Bill No. 331

Third reading copy (Blue color)

PRIVATE ENFORCEMENT OF HUMAN RIGHTS COMMISSION ORDERS

Senate 331

Respectfully report as follows: That Bill No.

be amended as follows:

1. Page 1, line 20.
Following: "by-injunction"
Insert: "by any appropriate order"

2. Page 2, line 3.
Following: "by-injunction"
Insert: "by any appropriate order"

AND AS AMENDED,
BE CONCURRED IN
DO PASS

SEN. TOM HAGER,
Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL NO. SB 322 (Sen. Towe); SB 327 (Sen. Brown); ~~SB 328 (Sen. Brown);~~ SB 331 (Sen. Christiaens) DATE March 19, 1985

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Chip Erdmann	MT School Bd Assoc	#327	
Rick Bartos	OPI	✓	
Terry Brown	OPI	✓	
Cliff Stee	Sch Dist #1 Butte	✓	
Pat Melor	Ralispell Sch Dist 5	✓	
Chuck Smith	Helena Sch Dist #1	✓	
Darlene Castonguay	Great Falls	✓	
George A. Hahl	Helena	✓	
Roger McGlenn	Independent Insurance Agents Assoc. of MT	322 ✓	
Bonnie Tippy	Alliance of Amer Ins	322	
Rick Simon	Student - Coker		
Anne MacIntyre	Human Rights Comm	SB 331	
Karl Englund	MT. Trial Lawyers	322 331	
Lisa M. Tong	School Admin of MT	327	
Dana P. Anderson	L C S D SPA	HB 5 PG 331	
M Rice	L C S D	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

EXHIBIT A
3/19/85
SB 331

Testimony of Anne L. MacIntyre in support of SB 331

Chairman Hannah, members of the Committee: I am Anne MacIntyre, administrator of the Human Rights Division. I am here today in support of SB 331.

The Human Rights Commission has requested the amendment of sections 49-2-508 and 49-3-311 for purposes of clarification.

In each instance in the past year in which the Commission staff has initiated an enforcement proceeding, the only matter at issue was the failure of the Respondent to pay a monetary award. While there have been only three such actions filed by the Commission staff in that year, it somehow seems inappropriate that the limited energies and resources of the Commission staff should be expended to enforce money judgments for private individuals. The Commission is strongly interested in seeing that its orders are enforced but, in the typical case where the Commission finds that an individual has been discriminated against and there is no apparent ongoing pattern or practice of discrimination, the Commission believes there is sufficient private incentive to insure enforcement of a monetary award.

In addition, the Commission is concerned about the use of the phrase "by injunction" in these enforcement provisions and asks that the legislature clarify these provisions by striking the phrase "by injunction." It would be truely unfair and unfortunate for a person to

pursue his or her case all through the contested case process established by law for hearing before the Commission, only to be forced to litigate the question of whether a court could enforce the Commission's award of affirmative relief such as reinstatement or back pay. While the equities in such a scenario would seem to favor the person attempting to enforce the order, and I find it difficult to imagine a court refusing to enforce such an order, my own philosophy of statutory construction favors elimination of statutory ambiguities by the legislature rather than interpretation by the courts.

Mr. Chairman, I thank the committee for hearing this matter, and I urge that you recommend SB 331 do pass. I will be happy to answer any questions you may have.

EXHIBIT B
3/19/95
SB 327

OFFICE OF PUBLIC INSTRUCTION
STATE CAPITOL
HELENA, MONTANA 59620
(406) 444-3095

Ed Argenbright
Superintendent

March 19, 1985

To: House Judiciary Committee

From: Terry F. Brown, Specialist
Pupil Transportation Safety

Re: Senate Bill 327 Supporting Testimony

Senate Bill 327 will increase the protection for school children while they are loading or unloading from a school bus.

Children have been killed and many have been injured because motorists have passed school buses while children are loading or unloading. You can help provide more protection for our children by passing this bill. SB327 will help law enforcement agencies obtain convictions against motorists who run the red lights of our school buses. As the law now stands, there must be positive identification of the individual driving the vehicle. When a school bus driver observes this violation, it is difficult to get all the information needed for a positive identification and concentrate on controlling the students and the bus. As a result, convictions are nearly impossible. This legislation will place responsibility on the registered owners of motor vehicles and will make the motoring public more aware of the fact that it is unlawful to pass a school bus when it is stopped with red lights flashing to load and unlaod school children.

TFB/rr

Brenda Due 2/13/84 :61-8-401
45-5-102

STATE REPORTER
Box 749
Helena, Montana

EXHIBIT B-1
3/19/85
SB328

VOLUME 41
NO. 83-134

STATE OF MONTANA,

Plaintiff and Respondent,

v.

STEVEN T. THOMPSON,

Defendant and Appellant.

Submitted: Oct. 24, 1983
Decided: Jan. 12, 1984

CRIMINAL LAW, Negligent Homicide, Appeal from a judgment of conviction by the District Court, Whether the prohibition against non-consensual extractions of blood samples applies to prosecutions for negligent homicide--SEARCHES AND SEIZURES

Appeal from the Fourth Judicial District Court, Missoula County, Hon. Jack L. Green, Judge

For Appellant: Goldman & Goldman, Missoula

For Respondent: Mike Greely, Attorney General, Helena
Robert L. Deschamps, III, County Attorney, Missoula

Bernard J. Goldman argued the case orally for Appellant; Chris Tweeten, Assistant Attorney General, for Respondent.

Opinion by Justice Gulbrandson; Chief Justice Haswell and Justices Shea, Morrison, Weber, Sheehy and Harrison concur.

Affirmed.

____Mont.____

____P.2d____

State, Plaintiff and Respondent, v. Thompson, Defendant and Appellant
41 St. Rep. 57

Mr. Justice Gulbrandson delivered the Opinion of the Court.

Appellant was convicted of negligent homicide after a jury trial held before the Honorable Jack L. Green. From this verdict, appeal is taken.

On March 6, 1982, appellant was driving west on Interstate 90 near East Missoula, Montana, when he was involved in a collision. Appellant's vehicle struck the rear end of a vehicle driven by Noah Hatton in which his wife, Sylvia Hatton, was the passenger. At the scene of the accident, appellant was placed under arrest for driving under the influence of alcohol in violation of Section 61-8-401, MCA. He was then transported to Missoula Community Hospital for treatment of minor injuries suffered in the accident.

While appellant was receiving treatment, a Montana Highway Patrol officer solicited and received permission from the attending physician to talk with appellant. The officer informed appellant of his Miranda rights and his rights under Montana's "implied consent" law, Section 61-8-402, MCA. The officer then requested appellant to allow the medical staff to draw a blood sample, and appellant refused. Section 61-8-402(3), MCA, provides that,

"If a resident driver under arrest, refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in subsection (1) of this section, none shall be given, but the officer shall, on behalf of the division, immediately seize his driver's license." (emphasis supplied)

The officer did not seize appellant's driver's license.

Confronted with this refusal, the officer instead contacted the office of the Missoula County Attorney for advice. He was informed that Sylvia Hatton, who had been taken to another hospital, had died as a result of injuries received in the collision. He was advised that since appellant now was a suspect in a negligent homicide, the implied consent law was inapplicable. The officer returned to appellant's room and informed him that Mrs. Hatton had died, that since he was now a suspect in a negligent homicide, the implied consent law did not apply and that a blood sample was needed. Though appellant apparently did not "consent," a blood sample was drawn and analyzed. Appellant's blood alcohol level was .12%.

On September 10, 1982, appellant moved the District Court to suppress the results of the blood test on the grounds that the blood sample had been drawn against his will in violation of the implied consent law. Briefs were submitted and the motion was argued orally before the Honorable Jack L. Green. The court found that on the facts outlined above the implied consent law did not apply because appellant was a suspect in a negligent homicide. The court further found that the blood sample was taken in compliance with the Fourth and Fourteenth Amendments of the United States Constitution, and Article , section 11 of the Montana Constitution. Since it was not an unreasonable search and seizure, the motion to suppress was denied.

State, Plaintiff and Respondent, v.
Thompson, Defendant and Appellant
41 St. Rep. 57

A jury trial was held, during which the results of the blood test were admitted into evidence. The jury found appellant guilty of negligent homicide. This appeal follows.

The sole issue raised on appeal is whether the prohibition against non consensual extractions of blood samples in Section 61-8-402, MCA, applies to prosecutions for negligent homicide, and this issue is dispositive. Appellant has not challenged the action taken below on constitutional grounds. We have previously held that blood samples drawn in violation of the statute are inadmissable in prosecutions for driving under the influence of intoxicating liquor. State v. Mangels (1975), 166 Mont. 190, 531 P.2d 1313. Therefore if Section 61-8-402 applies to negligent homicide prosecutions, the results of the blood test should not have been admitted into evidence and the motion to suppress should have been granted. The State has graciously conceded this point. It is urged by appellant that Section 61-8-402, MCA, be applied to persons arrested for negligent homicide, despite the operative language of the statue that engages its provisions, "[I]f (the suspect is) arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of alcohol." The District Court relied on this language in holding that the statute did not apply here.

Appellant contends that this Court previously ruled that the statute does apply to negligent homicide prosecutions in State v. Morgan (Mont. 1982), 646 P.2d 1177, 39 St.Rep. 1072. In Morgan, the defendant was involved in an automobile accident where two people died instantly. When the investigating officer interviewed the defendant at the hospital it was his opinion that the defendant was incoherent and could not have communicated a wish that a blood sample not be drawn. The officer concluded that since the defendant was in such a state, pursuant to Section 61-8-402(2), it was unnecessary to obtain consent before the blood was extracted. The question presented to this court was whether defendant was in such an incoherent state as to be unable to respond to a request for a blood sample, thus engaging the provisions of subsection (2) of the implied consent statute. We did not expressly rule that the implied consent law applied there as that question was not raised by defense counsel. We did rule that its provisions had been complied with.

In spite of appellant's assertions to the contrary, the Morgan case is not dispositive of the case at bar. The issue presented there is not the same as is presented here, even though this Court seemingly presumed that the statute applied. Morgan dealt strictly with the internal workings of the statute, and did not deal with its applicability. "What is not in issue is not decided." Sullivan v. Anselmo Mining Corp. et. al. (1928), 82 Mont. 543 at 555, 268 P. 495 at 500, citing Pue v. Wheeler (1927), 78 Mont. 516, 255 P. 1043. As the issue was not decided, the case is not authority for appellant's position. Martien v. Porter (1923), 68 Mont. 450, 219 P. 817.

We find that Section 61-8-402 does not apply to negligent homicide prosecutions. This conclusion is based on three considerations. First we consider the legislative intent. "Legislative intent must

first be determined from the plain meaning of the words used; and if the language is plain, unambiguous, direct and certain, the statute speaks for itself." Crist v. Segna (Mont. 1981), 622 P.2d 1028 at 1029, 38 St.Rep. 150 at 152, citing Dunphy v. Anaconda Co. (1968), 151 Mont. 76, 438 P.2d 660. The language of the statute and an examination of the statutory scheme of Title 61, Chapter 8, part 4 plainly show that application of the implied consent law to negligent homicide cases was not within the legislature's contemplation. The operative language of Section 61-8-402 reads,

"Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent, subject to the provisions of 61-8-401, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of alcohol." (emphasis supplied)

The underlined passage above makes it clear that the protections afforded there are not engaged until there is an arrest for driving under the influence. (But, see State v. Campbell (Mont. 1980), 615 P.2d 190, 37 St.Rep. 1337, where we held that an arrest is not always a prerequisite to administration of a blood alcohol test.) Not only is the section specifically premised on such an arrest, but it is made subject to the section of the code which outlines the offense of driving under the influence of alcohol or drugs. Appellant has characterized this language as extra verbage which this Court could ignore should it choose to apply the statutory protections to appellant. However, "All provisions of a statute shall be given effect, if possible." Crist, supra, 622 P.2d at 1029, 38 St.Rep. at 152, citing Corwin v. Bieswanger (1952), 126 Mont. 337, 251 P.2d 252. This Court does not have the power to remove or ignore language in a statute.

The second consideration is how similar implied consent laws have been interpreted in other jurisdictions. The implied consent laws of several jurisdictions expressly state that they apply to persons arrested for "any offense" arising out of operating a motor vehicle under the influence, and their courts have applied the statute to negligent homicide cases. See State v. Riggins (Fla.App. 1977), 348 So.2d 1209. However among the jurisdictions which have interpreted implied consent laws with operative language similar to Montana's, there has been a split of opinion. Some jurisdictions hold that their statutes do apply to negligent homicide prosecutions. See State v. Hitchens (Iowa 1980), 294 N.W.2d 686; and State v. Annen (1973), 12 Or.App. 1203, 504 P.2d 1400. However we feel the better reasoned cases hold that the statute does not apply to negligent homicide cases. See People v. Sanchez (1970), 173 Colo. 188, 476 P.2d 980; Van Order v. State (Wyo. 1979), 600 P.2d 1056; and State v. Robarge (1977), 35 Conn.Supp. 511, 391 A.2d 184. Relying on the plain wording of the statute, these cases held that applying the implied consent laws to negligent homicide prosecutions was not what the legislature had intended.

The third consideration also weighed heavily on the courts deciding the cases cited immediately above; suspension of the driver's license is simply an insufficient penalty for refusing to submit to a chemical analysis when there has been a death caused by the drinking driver. The gravity of the crime heightens the importance of the blood sample, and it appears the legislature felt this administrative remedy was simply inappropriate. The decision to modify the scope of the implied consent law properly rests within the legislature's power. It is not within our power to read into a statute more than is found there, as appellant would have us do. Therefore we hold that Section 61-8-402 does not apply to suspects in negligent homicide prosecutions.

The District Court's judgment is affirmed.

SENATE BILL NO. 89

INTRODUCED BY MAZUREK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO GARNISHMENT OF PERSONAL SERVICES EARNINGS; AMENDING SECTION 25-13-614, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-13-614, MCA, is amended to read:

"25-13-614. Earnings of judgment debtor. (1) ~~Except as provided in this section, the~~ The EXCEPT AS PROVIDED IN SUBSECTION (2), THE earnings of the judgment debtor for his personal services rendered ~~at any time within~~ DURING THE 45 ~~days next preceding~~ 45-DAY PERIOD PRIOR TO the levy of execution or attachment, ~~when it appears by the debtor's affidavit or otherwise that such~~ are exempt, ~~subject to the limitations in subsection (2), if upon a hearing held pursuant to [section 2], the court determines that the~~ TO THE EXTENT SUCH earnings are necessary for the ~~use~~ SUPPORT of his family ~~supported in whole or in part by his labor, are exempt~~.

(2) (A) NO EARNINGS ARE EXEMPT UNLESS THE JUDGMENT DEBTOR COMPLIES WITH [SECTION 2].

(B) Earnings ~~for personal services~~ are exempt ~~under~~

~~this--section--from~~ ~~subject--to-execution,-garnishment,-and attachment,-to-the-extent-allowed-by-15--U.S.C.--1673,--upon~~ EXEMPT UNDER THIS SECTION FROM judgments or orders for maintenance or child support ~~only-to-the-extent--allowed--by 15-U.S.C.-1673.~~ ~~and-to-satisfy~~ ONLY TO THE EXTENT ALLOWED BY 15 U.S.C. 1673.

(C) ONE-HALF OF EARNINGS ARE NOT EXEMPT FOR

~~(3)~~--Whenever debts are incurred by ~~any-such-person~~ the judgment debtor or his ~~wife-or~~ family for gasoline and ~~for~~ the common necessaries of life, ~~then-the--one-half--of--such earnings-are-nevertheless-subject-to-execution,-garnishment, and-attachment-to-satisfy-debts-so-incurred~~.

~~(4)~~(3) The words "his family", as used in this section, except to the extent that these words include a person covered by a judgment or order under subsection (2), are to be construed to include:

(a) the judgment debtor's spouse;

(b) every person who resides with the judgment debtor under his care or maintenance and who is:

(i) a minor child of the judgment debtor or of his spouse or former spouse;

(ii) a minor grandchild, brother, or sister or minor child of a brother or sister of the judgment debtor or of his spouse;

(iii) a father, mother, grandfather, or grandmother of

the judgment debtor or of his spouse or former spouse;

(iv) an unmarried sister, brother, or any other relative of the judgment debtor mentioned in this section who has attained the age of majority and is unable to care for or support himself."

NEW SECTION. Section 2. Execution against earnings of judgment debtor -- affidavit of exemption -- hearing. (1) ~~NO EXECUTION AGAINST THE EARNINGS OF A JUDGMENT DEBTOR MAY TAKE PLACE UNLESS--THE--DEBTOR--HAS--BEEN--GIVEN--NOTICE--OF--THE OPPORTUNITY TO FILE AN AFFIDAVIT PURSUANT TO THIS SECTION.~~ A judgment debtor may exempt earnings for his personal services, as provided in 25-13-614, by filing an affidavit with the court that issued the writ of execution or attachment declaring that such earnings are necessary for the ~~use~~ SUPPORT of his family ~~supported in whole or in part by his labor~~. THE AFFIDAVIT MUST INCLUDE THE ADDRESS OF THE JUDGMENT DEBTOR OR HIS ATTORNEY FOR PURPOSES OF SERVICE OF NOTICE UNDER SUBSECTION (2). LEVY OF EXECUTION OF JUDGMENT IS AUTOMATICALLY STAYED BY THE FILING OF AN AFFIDAVIT.

(2) When an affidavit of exemption is filed, the court shall IMMEDIATELY MAIL A COPY OF THE AFFIDAVIT TO THE JUDGMENT CREDITOR AND, UPON MOTION OF THE JUDGMENT CREDITOR, set the matter for hearing within 14 days to determine eligibility for and the amount of exemption, if any, under 25-13-614. The court shall ~~immediately~~ mail a ~~copy--of--the~~

~~affidavit--and~~ notice of hearing to the ~~party-who-requested issuance-of-the-writ--of--execution--or--attachment.~~ ~~IF--NO MOTION--IS--FILED,--LEVY--OF--EXECUTION-UPON-THE-EARNINGS-IS AUTOMATICALLY-STAYED~~ PARTIES.

~~(3) The-sheriff-shall-hold-all-money-received-from-the execution-in-a-fiduciary-account,-pending-a-final--order--of the--court~~ ~~DIRECTING-DISPOSITION-OF-THE-MONEY-FOLLOWING-THE HEARING-ON--THE--AFFIDAVIT~~ FOLLOWING THE HEARING ON THE AFFIDAVIT, THE COURT SHALL REMOVE THE STAY, ORDER THE STAY EXTENDED, OR REMOVE THE STAY TO THE EXTENT OF NONEXEMPT PROPERTY.

NEW SECTION. Section 3. Codification instruction. Section 2 is intended to be codified as an integral part of Title 25, chapter 13, part 4, and the provisions of Title 25, chapter 13, part 4, apply to section 2.

NEW SECTION. Section 4. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

NEW SECTION. Section 5. Effective date. This act is effective on passage and approval.

-End-