

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 8, 1985

The first meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on January 8, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senator Jack Galt, who was excused to attend a Reserved Water Rights Compact Commission meeting.

INITIAL COMMITTEE CONSIDERATIONS: Chairman Mazurek introduced the committee to those in attendance. Introductions included the committee members, the legislative staff attorney, Greg Petesch; the committee secretary, Cindy Staley; and his legislative aide, Bill Huber.

Chairman Mazurek explained that although hearings themselves would be conducted with the committee members seated at the bench, executive session would be conducted at the table located in front of the bench.

Chairman Mazurek announced that Vice Chairman Daniels and he would be scheduling the hearings on bills received by the Judiciary Committee. He asked that if any sponsor had a date when he would like his bill heard, he let either Vice Chairman Daniels or himself know, as they will make every effort to be accommodating.

Chairman Mazurek explained to the committee members the operation of the microphones located on the bench.

There being no questions from the committee members as to the general operation of the committee, Chairman Mazurek proceeded with hearing the scheduled bills.

CONSIDERATION OF SB 5: Senator Kermit Daniels, sponsor of SB 5, explained that this is a housekeeping bill. When the Montana Code Annotated (hereinafter MCA) became effective on January 10, 1979, it succeeded the Revised Codes of Montana 1947 (hereinafter RCM). There remained uncodified in the RCM several sections which have created some ambiguity. It is the purpose of this bill to state that any portion of the RCM which conflicts with the present MCA would be overruled and of no force and consequence retroactive to January 10, 1979.

PROPOSERS: John McMaster, the drafter of this legislation from the Montana Legislative Council, spoke in favor of SB 5. He explained that this bill also takes care of the similiar situation which occurs with the session laws in the same way it does with the MCA--only one of the session laws will be codified when they both say the same thing. In addition, Mr. McMaster explained the same thing happens with repealers. The uncodified law will also be repealed or amended, as well as the law which has been codified.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe requested that Mr. McMaster provide the committee with an example of the situation contemplated by this bill. Mr. McMaster referred the committee to the Code Commissioner Bill - Summary (see Exhibit 1) which was distributed with the bill. Senator Crippen wanted to know the effect of the RCM as far as law is concerned. Mr. McMaster stated the RCM is still in effect and if a law were not in the MCA, the RCM would apply. Senator Crippen requested information as to why the redundant provisions were not deleted when the legislature codified the RCM to the MCA. Mr. McMaster stated he understood they did not believe at that time it would be a problem. Senator Crippen questioned why if the RCM is still the law, it shouldn't be repealed by a separate repealer. Mr. McMaster stated that he and Bob Pyfer, the Director of the Legal Services Division of the Legislative Council, discussed various ways to handle this problem. They felt it was best to amend both and repeal both in one action rather than two. Mr. McMaster stated it is often hard to determine whether there is a redundant, uncodified provision when you repeal or amend, although hopefully there will be an annotation under the provision that would alert you to this. Senator Crippen stated that if the RCM is still the law of the land, he questioned whether the Code Commissioner should be involved in changing the law or eliminating the law in this fashion. Mr. McMaster stated the idea behind the MCA codification process was to rework it and come up with a new code that is easier to use--nothing was added. It was simply a continuation of the old RCM code but in a newer and more modern form. Senator Towe questioned whether the Legislative Council identified all of the duplications and, if so, why a blanket repealer had not been proposed. Mr. McMaster stated they felt it would be quite a bit of work. Although they would be able to refer to the annotations for help in locating these redundancies, he was not certain whether some had been inadvertently missed. Senator Towe stated that at the time the MCA was adopted, the Legislative Council explained each section in the RCM stating why or why not it was picked up in the MCA. Senator Blaylock agrees with a blanket repealer and stated that from a layman's standpoint, he feels what Senator Towe says is correct--a lawyer would not want to have to worry about going back to the old codes all of the time. Senator Towe had a vague remembrance there was some

hesitation at the time the MCA was adopted to repealing the redundant sections. Senator Towe suggested the committee ask the researcher to look into doing some type of a blanket repealer. Senator Towe stated the committee needed to know if this were an overwhelming job before asking the researcher to do this. Senator Mazurek suggested this bill is necessary because they may not be able to identify all of the redundant laws through the annotations. Mr. McMaster stated this was correct. SB 5 states any provision not codified in the MCA because it was redundant with a codified provision is repealed, and this in no way affects the ones that were codified.

CLOSING REMARKS: Senator Daniels stated he felt the recodification process was a herculean task. He stated the City of Deer Lodge went through a similar situation in recodifying its ordinances. He believes the researchers have given it their best shot and used their best judgment in coming up with the solution indicated by SB 5. He doesn't feel a bill of this consequence is important and further doesn't feel the committee should spend a lot of time mulling it over and probably still not come up with a perfect bill. He believes SB 5 was researched thoroughly. Mr. McMaster also stated that a blanket repealer bill will not take care of future problems which may occur if subsequent legislative sessions adopt redundant bills.

Hearing on SB 5 was closed.

CONSIDERATION OF SB 30: Senator Tom Towe, sponsor of SB 30, stated this is a bill that was presented to him by a member of the Yellowstone County Attorney's office (see Exhibit 2). He stated we presently have a system by which a person can accumulate points against his driver's record. When 30 points have been accumulated, his license is revoked. Some people did not know they were accumulating points and were close to losing their licenses. The county attorney's office wanted to give those people warning in hopes of making them more careful, and Senator Towe feels making them more careful is the point of our laws. SB 30 suggests a warning provision which would require sending a notice to the driver's last-known address after he has accumulated 15 or more conviction points. Senator Towe submitted two proposed amendments for consideration by the committee (see Exhibit 3). The first amendment changes the number from 15 points to 22 to reduce the number of notices which would initially be required to be sent. If 22 is used, this would reduce the cost, but would still make it effective. This bill would pick up anyone who may have been missed being notified in some other manner. The driver rehabilitation program requires that you go through driver rehabilitation when you obtain 15 points, but the points are figured differently and you might slip through the cracks (see Exhibit 4 as to how the points are figured). This bill addresses the 5-10% that may have dropped through the cracks.

PROPOSERS: Larry Majerus, Administrator of the Motor Vehicles Division of the Department of Justice, appeared in support of the bill. Until he heard the amendments proposed by Senator Towe, it had been Mr. Majerus's intention to appear in opposition to the bill, as he did not want the notice itself interjected into court proceedings. He also did not want the state to have to bear the expense of furnishing people to go to various courts around the state and testify as to the fact the notice had indeed been sent on such and such a date to such and such a person. He stated the Department of Justice is not opposed to noticing people when they become habitual traffic offenders. Mr. Majerus did state the Department could expect some problems from sending an individual a notice stating he has 18 points and two weeks later find out he now has 30 points. Mr. Majerus stated a fiscal note has been requested on this bill. Majerus stated that if the committee would like information as to the number of drivers that have over 22 points, the Department can put that information together with two days' notice. Mr. Majerus stated the committee should keep in mind the Department would need additional funding to generate the additional notice required by the bill.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault stated he appreciates the problem that from the time one notice is sent, another offense could have occurred. He suggested the Department phrase the notice to state that from the time of the notice, another offense could have occurred. Mr. Majerus stated notices are not received in the order of their occurrence. The trigger in the present law is when the Department's records indicate 15 points have been accumulated. Senator Daniels asked how accurate the records were that are involved in keeping track of these records. He has been in the situation in court where he was prosecuting habitual traffic offenders only to find out the records were inaccurate. Mr. Majerus stated he is aware of some such incidences but feels the records are in better shape than they were five or six years ago because the court clerks are being more careful. He did state at some times it is difficult to establish the actual level of points. Senator Towe followed up on Senator Pinsoneault's comment stating maybe language could also be added to the effect that different courts may not be as prompt in sending in notices, so the notice may not include all of the traffic offenses which the driver may have incurred. Senator Towe felt we could hedge in the language by saying the notice may not be entirely accurate but it is what our records reflect. Mr. Majerus suggested that too lengthy of a letter might not be effective. Some of their experience with letters is the more you put in it, the more it confuses the issue. Senator Towe felt it would only be adding two sentences. Senator Mazurek asked what the fiscal impact would be assuming 15 points. Mr. Majerus stated 21,000 letters would be required, but he was not aware of what the budget office will come up with for an

actual dollar figure. He again stated they have requested that, but do not know it at this time. Senator Crippen wanted clarification that when a person is convicted of DUI and given points, whether the court generally advises that person he has started up the point ladder. He wanted clarification as to how that person is made aware there is a point system. Mr. Majerus stated this information is first provided in the driver's license manual, although he felt people have a tendency not to pay attention to it. He further stated some courts hand out the pamphlet introduced by Senator Towe (see Exhibit 4) on a regular basis.

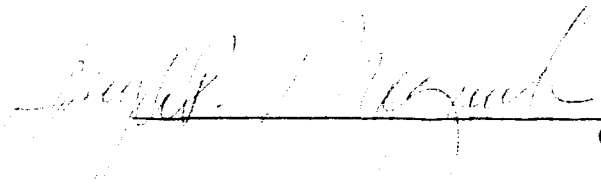
CLOSING STATEMENT: In closing, Senator Towe added the additional point that it does seem those persons who really did not realize they were getting close to the maximum should be given an opportunity to avoid losing their licenses before they accumulate those last few points. By sending out such notice, we may avoid some accidents, so 20¢ postage for each notice is worth the cost. He further felt that in fairness we should tell them before they lose their licenses.

Hearing on SB 30 was closed.

FURTHER COMMITTEE ORGANIZATION CONSIDERATIONS: Chairman Mazurek stated the policy of the committee would be that committee members would not be allowed to leave votes with the committee when they had to absent themselves from the room. In exchange for that, the committee will make every attempt to refrain from taking action on any particular bill about which a member or the committee feels strongly until all of the committee members can be present. Although the committee is aware this may not be possible in every instance, the committee will attempt to abide by this rule.

Chairman Mazurek requested the committee secretary to check into the possibility of the committee's contributing to the Secretary of the Senate's coffee fund rather than beginning its own and asked that she report to the committee on her findings at its next meeting.

There being no further business to come before the meeting, the meeting was adjourned at 11:00 a.m.


Chairman

Tuesday, January 8, 1985

Judiciary

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

SENATE BILL NO. 5

AN ACT TO PROVIDE FOR LEGAL EFFECT WHENEVER A PROVISION OF LAW IS NOT CODIFIED IN THE MONTANA CODE ANNOTATED BECAUSE IT IS REDUNDANT WITH A CODIFIED PROVISION AND THE CODIFIED PROVISION IS SUBSEQUENTLY AMENDED, REPEALED, OR DELETED; PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE AND FOR RETROACTIVE APPLICABILITY.

Section 1. When the R.C.M., 1947, was recodified in the MCA, and two or more R.C.M., 1947, provisions read the same, only one of them was codified in the MCA. Section 1-11-101, MCA, authorizes elimination of redundant words in the recodification process.

Section 1-11-103, MCA, provides that the MCA "shall be enacted as a reenactment" of the R.C.M., 1947, and "shall be given effect as a continuation" of the R.C.M., 1947. Provisions of the R.C.M., 1947, that were not codified in the MCA because they were redundant with other R.C.M., 1947, provisions that were codified still have legal effect.

A problem arises whenever an R.C.M., 1947, provision was not codified in the MCA because it is redundant with a codified provision and the codified provision is later amended in a way that makes it conflict with the uncoded provision. It could be argued that the uncoded provision is still the law, and the question arises whether it governs or whether the codified provision, as amended, governs. This bill provides that the codified provision, as amended, governs. This bill also provides that whenever a codified provision is repealed or deleted, a redundant uncoded provision is also repealed or deleted, whether or not the codified provision was amended prior to its repeal or deletion.

The problems addressed above may also occur (and this bill handles them in the same manner) if a provision of a session law passed since the MCA became effective on January 10, 1979, is not codified in the MCA because it is redundant with a codified provision.

Section 2. This section makes section 1 retroactive to January 10, 1979, the day the MCA became effective. The purpose of this section is to cover the codification process beginning with the effective date of the MCA.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 010885

BILL NO. SB 5

Examples of R.C.M., 1947, Provisions
Not Codified in the Montana Code Annotated
Because They Were Redundant
With Other Codified Provisions

Example 1. Section 16-519, R.C.M. 1947, reads:

"16-519. (4406) Misdemeanor and malfeasance in office. Any member of the board of county commissioners, or any other officer who unlawfully and knowingly violates any of the provisions of this act, or fails or refuses to perform any duty imposed upon him hereunder, shall be guilty of a misdemeanor and of malfeasance in office, and shall be deprived of his office by a decree of a court of competent jurisdiction, after trial and conviction."

This section was not codified in the Montana Code Annotated because it is redundant with 45-7-401(1)(a), (1)(b), and (4).

Section 45-7-401, MCA, reads:

"45-7-401. Official misconduct. (1) A public servant commits the offense of official misconduct when in his official capacity he commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;

(b) knowingly performs an act in his official capacity which he knows is forbidden by law;

(c) with the purpose to obtain advantage for himself or another, performs an act in excess of his lawful authority;

(d) solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law; or

(e) knowingly conducts a meeting of a public agency in violation of 2-3-203.

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The district court shall have exclusive jurisdiction in prosecutions under this section. Any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) may be suspended from his office without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office. Upon

SENATE JUDICIARY COMMITTEE

1 acquittal he shall be reinstated in his office and shall
2 receive all backpay.

3 (5) This section does not affect any power conferred
4 by law to impeach or remove any public servant or any
5 proceeding authorized by law to carry into effect such
6 impeachment or removal."

7 The codified and uncodified provisions were enacted by
8 different acts of the Legislature. Since they both provided
9 the same thing, only one was codified.

10 Example 2. Subsections (1) and (2) of section 26-1802,
11 R.C.M. 1947, were not codified in the Montana Code Annotated
12 because they are redundant with 87-1-101(2) and (3). These
13 provisions of the R.C.M., 1947, and the Montana Code
14 Annotated read:

15 "26-1802. Definitions. As used in this chapter the
16 following definitions apply:

17 (1) "Department" means the department of fish and
18 game.

19 (2) "Director" means the director of the state
20 department of fish and game."

21 "87-1-101. Definitions. Unless the context requires
22 otherwise, in this title the following definitions apply:

23 (1) "Commission" means the fish and game commission
24 provided for in 2-15-3402.

25 (2) "Department" means the department of fish,
26 wildlife, and parks provided for in Title 2, chapter 15,
27 part 34.

28 (3) "Director" means the director of fish, wildlife,
29 and parks provided for in 2-15-3401.

30 (4) "Warden" means a state fish and game warden."

31 The Department of Fish and Game referred to in the
32 R.C.M., 1947, section was, of course, renamed the Department
33 of Fish, Wildlife, and Parks.

34 Example 3. Section 72-170, R.C.M. 1947, and 69-2-211, MCA,
35 read:

36 "72-170. Notice to be served on consumer counsel. In
37 addition to all other forms of notice of hearings conducted
38 by the commission provided for in this title, notices of all
39 hearings shall be served upon the Montana consumer counsel."

40 "69-2-211. Notice to consumer counsel. In addition to
41 all other forms of notice of hearings conducted by the
42 commission provided for in this title, notices of all
43 hearings shall be served upon the consumer counsel."

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EXHIBIT NO. 1

DATE 11-22-66

1 The R.C.M., 1947, provision was not codified in the
2 Montana Code Annotated because it is redundant with
3 69-2-211, MCA.

County of Yellowstone

P.O. BOX 35025

BILLINGS, MONTANA 59107

COUNTY ATTORNEY'S OFFICE, YELLOWSTONE COUNTY COURTHOUSE, ROOM 508

HAROLD F. HANSER, COUNTY ATTORNEY

(406) 252-5181 ext. 230 252-6720



- ☐ Criminal Division
- ☐ Civil Division
- ☐ Deferred Prosecution

- ☐ Victim/Witness Assistance
- ☐ Child Support Enforcement
- ☐ Criminal Investigation Division - 245-6625

September 11, 1984

Senator Thomas Towe
Towe, Ball, Enright and Mackey
2525 Sixth Avenue North
Billings, MT 59101

Dear Senator Towe:

When we last spoke by phone, I mentioned to you that one aspect of the law regarding habitual traffic offenders (HTO's), bothered me. You suggested that I express my concerns and suggestions in a letter to you. Here it is.

Under the existing HTO laws -- Title 61, Chapter 11, Part 2, Montana Code Annotated -- the duties of the Motor Vehicle Division (MVD) are not triggered until a driver accumulates 30 or more points against his driver's record. That number of points brings the driver within the definition of an HTO as defined in 61-11-203(2), MCA, and, in most cases, will lead to a judicial determination that he is an HTO. Such a finding almost without exception results in the driver's losing his driver's license for a three-year period, with no right to obtain a provisional license for the first year of the three-year period.

In my experience, most of the persons who have shown up for HTO hearings had little or no idea of the number of points they had accumulated against their driving records, and were totally unaware of the severity of the sanction imposed upon HTOs. In addition, many of them are young and attending school. Almost all are working and driving to and from work. A three-year loss of their driver's license is really a blow to them. It occurs to me that, in fairness, these people should be entitled to some kind of warning before the boom is lowered so heavily.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE SEP 12 1984
BILL NO. 518 30

Towe (cont)
page 2

Therefore, I would suggest that Title 61, Chapter 11, Part 2 of the Montana Code Annotated be amended to provide for an automatic letter of warning to any Montana driver who accumulates 15 or more HTO points against his driving record. It should be sufficient that the letter be mailed to the driver's last-known address, since other Title 61 sections require that a driver keep the MVD apprised of his current address. The letter should inform the driver of the total number of points he has accumulated and should clearly indicate the nature of the sanctions imposed when a driver does accumulate 30 or more points, thus coming within the definition of an HTO. Because the MVD records are computerized, and because this type of warning could be set forth in a form letter, this requirement should not be particularly onerous for the MVD. And it could well result in many prospective HTOs curbing their reckless ways and becoming less of a hazard to other citizens.

The amendment easily could be inserted into section 61-11-204, MCA as sub.(1), with the existing provisions to be sub.(2). Proposed Section 61-11-204(1), MCA could be stated in the following or similar form:

61-11-204. Division's duties.

(1) whenever it appears from the records maintained in the division that a person has accumulated 15 or more points against his driving record, as articulated in 61-11-203, the division shall forthwith notify him at his last-known address of the number of points he has accumulated and the procedures involved and the sanctions imposed upon a driver whose record brings him within the definition of an habitual traffic offender."

(2) (The existing provisions of 61-11-204)."

Senator Towe, I appreciate your interest and consideration in this matter. If I can be of further help to you in this or any way, do not hesitate to let me know.

Sincerely,



Donna K. Heffington

Deputy County Auditor

Yellowstone County

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 010886

cc: Harold Hanser

Yellowstone County Attorney

SENATE BILL NO. 30

INTRODUCED BY TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO GIVE A WARNING NOTICE TO A DRIVER WHO HAS ACCUMULATED 22 OR MORE CONVICTION POINTS TOWARD THE STATUS OF HABITUAL TRAFFIC OFFENDER; AMENDING SECTION 61-11-204, MCA"

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

Section 1. Section 61-11-204, MCA, is amended to read:

"61-11-204. Division's duties --warning notice--
initiation of sanctions. (1) Whenever it appears from the
records maintained in the division that a person has
accumulated 22 or more conviction points according to the
schedule specified in 6-11-203, the division shall notify
him at his last-known address of the number of conviction
points accumulated and the procedures and penalties
associated with the status of habitual traffic offender. The
notice may be by mail. Failure to receive the notice or
timing of the notice shall not affect the accumulation of
points and shall not be a defense to the charge of an
habitual traffic offender.

(2) Whenever it appears from the records maintained in the division that a person's driving record brings him within the definition of an habitual traffic offender, as defined in 61-11-203(2), the division shall forthwith certify two copies of that person's driving record and two copies of all relevant abstracts of conviction. One copy of the record and abstracts shall be certified to the attorney general and one copy of the record and abstracts shall be certified to the county attorney for the county wherein the person is found. If the person is not licensed by Montana to drive a motor vehicle, but is licensed in another state, the division may certify the copy of the records and abstracts to the attorney general and also to the county attorney for the county in which the person is found or, in the alternative, to the county attorney for the county of Lewis and Clark."

-End-

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 010885

BILL NO. SB 30

WHY AN HABITUAL TRAFFIC OFFENDER ACT?

This act is predicated upon the belief and philosophy that the innocent users of Montana's highways and streets have a constitutional right to do so without fear of death or injury from the habitual traffic offender.

WHO IS AFFECTED?

The citizens of Montana and others using the streets and highways will be protected by this act.

Those who violate the traffic laws will have conviction points assigned to their records.

WHO IS AN HABITUAL TRAFFIC OFFENDER?

Any driver who accumulates 30 or more conviction points as specified in Section 61-11-203 MCA.

(a) deliberate homicide (vehicular)	15	(g) hit and run (private damage)	4
(b) negligent homicide (vehicular)	12	(h) reckless driving	5
(c) felonies (vehicular)	12	(i) drag racing	5
(d) D.W.I.	10	(j) no driver license (more than 180 days)	2
(e) drive while suspended or revoked	6	(k) speeding	3
(f) hit and run (injury or fatality)	8	(l) other traffic violations	2

WHAT HAPPENS TO A PERSON WHO HAS 30 POINTS?

His driving record is certified to the county attorney who files a complaint with the district court. The individual is summoned before the court, which determines if he is the individual named and that the point total is correct, and issues an order declaring him an habitual traffic offender.

WHAT IS THE AFFECT OF SUCH AN ORDER?

The habitual traffic offender shall not operate a vehicle in the state of Montana for a period of 3 years, except after completing a minimum of 1 year of the revocation he may be considered for a restricted driver license upon meeting the requirements for reobtaining a driver license. The requirements under these circumstances include attendance at a driver rehabilitation course (fee \$50.00). He will also be required to post proof of financial responsibility for an additional 3 years after satisfying the original revocation period. This in some instances can increase the liability premium drastically.

WHAT HAPPENS TO AN HABITUAL TRAFFIC OFFENDER WHO DRIVES IN VIOLATION OF THE COURT ORDER?

He shall be imprisoned for a period not to exceed 1 year or fined not more than \$1,000.00 or both.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 010885

BILL NO. SB 30