

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 22, 1985

The thirty-eighth meeting of the Senate Judiciary Committee was called to order at 2:33 p.m. on February 22, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

ACTION ON SB 206: Proposed amendments were distributed to the committee (Exhibit 1). Senator Towe stated the amendments are what the Uniform Commercial Code provides for notice filings. Senator Towe moved adoption of the amendments. The motion carried unanimously. Senator Towe moved SB 206 be further amended as follows:

Page 4, line 4.
Following: "LIEN"
Insert: "notice, on a"
Following: "FORM"
Strike: ", "

The amendment carried unanimously. Senator Towe moved SB 206 be recommended DO PASS AS AMENDED. The motion carried unanimously.

ACTION ON SB 217: Mr. Petesch stated the proposed amendments to SB 217 (Exhibit 2) would make this act apply to cities over 20,000 and reinstate the optional provision that if the city so chooses, it can establish a municipal court. Senator Towe explained amendment No. 6 eliminates the pay plan; amendment No. 9 has the effect of requiring the cities to pay 100% of the costs; and amendment No. 10 states there should be no financial implication for anyone. Senator Towe stated if the municipal court system is utilized and there are cases that otherwise would be filed in the district courts, the counties will lose those moneys. Senator Blaylock asked why we are doing this. Senator Towe responded to improve our system. He believes because justices of the peace are not required to be lawyers, lawyers will not take cases to them, so all of the junk is filed in the district court. If the city agrees, they can put in a system which can take that junk off the district court. Senator Mazurek stated he doesn't like the idea of termination of parental rights and private adoption placements being before a municipal court. Senator Blaylock asked who pays for it. Senator Towe responded it is paid for by the fees, fines, and forfeitures paid into the court. Senator Towe moved the amendments be

adopted. The motion carried unanimously. Senator Towe moved SB 217 be recommended DO PASS AS AMENDED. The motion carried with Senators Crippen, Galt, and Shaw voting in opposition.

ACTION ON SB 381: Proposed amendments from the Attorney General were distributed to the committee (Exhibit 3). Kim Kradolfer stated they had problems with the bill. They believe the concept was a good idea to have an increased penalty for aggravating factors. They believe the easiest way to accomplish that would be to undo what this bill did and rather than creating the offense of aggravated DUI, increase the penalty for aggravating factors. Senator Mazurek asked if this made it an enhancement statute. Ms. Kradolfer responded affirmatively. Senator Mazurek asked if a first time DUI offender were driving home drunk and veered off the road and struck a fence, he would get a five-day sentence for property damage. Ms. Kradolfer responded affirmatively, stating this will accomplish what the other bill attempted to do, which was to provide a higher penalty when something like this happens. Senator Mazurek asked Gary Ryder what he felt about the committee's taking the word "shall" out and making it discretionary. Mr. Ryder stated they have that discretion now, but as a matter of course, it is not done. He further stated the purpose of this bill is for the judge to take a look at these circumstances. He would prefer a mandatory sentence. Senator Mazurek stated he would suspect that judges in aggravating circumstances would impose a higher sentence anyway. Ms. Kradolfer stated not in their experience. Senator Towe stated it is his understanding this would not be charged as an aggravated case, but there would be a trial to determine the guilt of the defendant and then the judge is mandated to add this punishment if he is satisfied these things apply. He asked whether a "beyond a reasonable doubt" standard would be required. Senator Blaylock stated he is nervous about this bill. He believes with the stiffening of the DUI laws done last session, he has found that a lot of people were saying they were really watching it and not driving when they're drunk. Senator Blaylock stated this five days in jail is over and above what we are already doing right now, and he does not believe it is necessary as the legislature enacted maximum and minimum sentences last session and he believes those should be used at this time for this purpose. Mr. Ryder stated there is that one group of people we just can't get at without this bill. He believes the dangerous offender should be targeted and believes that was the purpose of the bill. Senator Shaw moved SB 381 be TABLED. The motion carried with Senators Blaylock, Pinsoneault, and Yellowtail voting in opposition.

ACTION ON SB 375: An amendment proposed by Senator Crippen was distributed to the committee (Exhibit 4). Senator Towe moved adoption of the amendment, which motion carried unanimously. Senator Towe moved SB 375 be recommended DO PASS AS AMENDED and stated this bill proposed a probation situation for those persons who have already been adjudicated

and sent to the Montana State Hospital so the state can retain control over them. The motion carried unanimously.

ACTION ON SB 376: Proposed amendments suggested at the hearing on SB 376 were distributed to the committee (Exhibit 5). Senator Blaylock stated he has deep reservations about this bill. Senator Daniels he did, too. Senator Towe stated this is something that has been in a different form before this legislature before, It is a new concept, it it is an age-old problem. He stated psychologists say there is a group of people who are out there that are very disruptive. That is the person they are trying to get at. Senator Daniels stated he agrees there is a probelm which exists, but 15 years ago, the psychiatrists' answer to every problem was shock treatment. He believes the same situation will occur with forcing treatment of these people. He has a great respect for the doctors, but they do tend to experieiment with drugs. He sees the need for this type of bill, but he doesn't see where a guy has to be a guinea pig for the medical profession. Senator Pinsonault stated the moving party should be limited to a family member or restricted in some way. He stated there is a need for it, but there is a potential for abuse, so the bill needs more refinement. Senator Towe moved SB 376 be amended as follows:

Page 7, line 14.

Following: "of"

Strike: "any person"

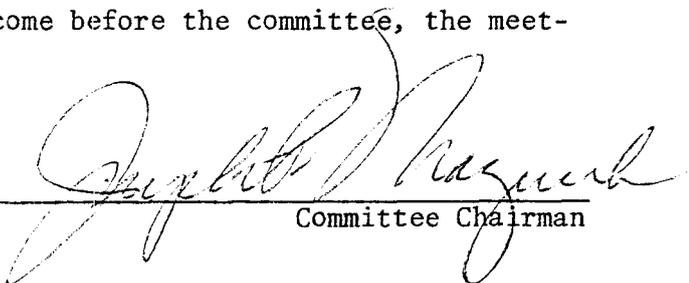
Insert: "a relative within the first degree of consanguinity
or affinity or a legal guardian"

The motion carried unanimously. Senator Mazurek addressed proposed amendment No. 4 and stated his concern was the court may be presented with two different options by two different physicians in which case the court is going to have to make that determination. Senator Shaw moved that the proposed amendment No. 4 not be adopted. The motion carried unanimously. Senator Towe addressed proposed amendments No. 5 and alternative No. 5 and stated the policy is a very significant one because you are forcing him to take treatment and then you are making him pay for it. Senator Pinsonault stated if a family is financially able, you are not going to find strong opposition to this. Senator Mazurek stated you can be made to pay if you are committed to Warm Springs. Senator Pinsonault moved alternative amendment No. 5 be adopted rather than No. 5. The motion carried unanimously. Senator Towe moved the rest of the proposed amendments be adopted. The motion carried unanimously. Senator Towe moved SB 376 be recommended DO PASS AS AMENDED. Senator Daniels stated we have not addressed the problem of the doctor that wants to experiment. The motion carried with Senator Blaylock voting in opposition.

Senate Judiciary Committee
Minutes of the Meeting
February 22, 1985
Page 4

ACTION ON SB 414: Senator Towe moved SB 414 be recommended DO PASS,
which motion carried unanimously.

There being no further business to come before the committee, the meet-
ing was adjourned at 3:33 p.m.



Committee Chairman

2nd, yellow
OK

SENATE BILL 206

Amendments to SB 206:

1. Page 4, line 4.

Following: "LIEN"

Insert: "notice, on a"

Following: "FORM"

Strike: ", "

2. Page 4, line 9.

Following: "the"

Insert: "accompanied by or"

3. Page 4, lines 12 through 14,

Following: "~~dealer.~~" on line 12

Strike: remainder of line 12 through "party." on line 14

Insert: "If the approved notice form is transmitted to the division, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor."

PROPOSED AMENDMENTS TO SB 217:

1. Title, line 4.
Following: "ACT"
Strike: "REQUIRING"
Insert: "PROVIDING"

2. Title, line 5.
Following: "COURTS"
Insert: "MAY"

3. Title, line 6.
Following: "OF"
Strike: "10,000"
Insert: "20,000"

4. Page 1, line 22.
Following: "of"
Strike: "10,000"
Insert: "20,000"

5. Page 1, line 23.
Following: "may"
Strike: "must"
Insert: "may"

6. Page 6, line 7.
Following: "be"
Strike: remainder of line 7 through "judge" on line 8
Insert: "shall be set by city ordinance"

7. Page 4, lines 11 and 12.
Following: "hearings" on line 11
Strike: remainder of line 11 through "cases" on line 12

8. Page 7, lines 5 and 6.
Strike: subsection (a) in its entirety
Renumber: subsequent subsections

9. Page 8, line 10.
Following: "to"
Strike: "70"
Insert: "100"

10. Page 8.
Following: line 18
Insert: "(4) After the payment required by subsection (2), the clerk of court shall distribute 40% of any amount remaining in the municipal court account to the counties comprising the judicial district in which the municipal court is located based upon the ratio of each county's population to the total population of the counties comprising the judicial district."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 022285
BILL NO. SB 217

PROPOSED AMENDMENTS TO SB 381, INTRODUCED COPY

1. Title, line 4:
Following: "entitled: an act"
Strike: "creating the offense of"
Insert: "providing an additional
penalty for"
2. Title, line 5:
Following: "Influence,"
Strike: "providing penalties"
3. Title, line 6:
Strike: "61-5-205" "61-5-208"
Insert: "61-8-406"
4. Page 1, line 13:
Following: "61-8-714"
Insert: "and [Section 6]"
5. Page 2, line 2:
Strike: Lines 2 through 11
6. Page 2, line 12:
Insert: "(2)"
Strike: "(3)"
7. Page 2, line 13:
Following: "subsection (1)"
Strike: "or (2)"
8. Page 2, line 16:
Following: "subsection (1)"
Strike: "or (2)"
9. Page 2, line 17:
Insert: "(3)"
Strike: "(4)"
10. Page 3, line 13:
Insert: "(4)"
Strike: "(5)"
Following: "subsection"
Insert: "(3)"
Strike: "(4)"
11. Page 3, line 17:
Insert: "(5)"
Strike: "(6)"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 022285
BILL NO. SB 381

12. Page 3, line 19:
Following: "through"
Insert: "(4)"
Strike: "(5)"
13. Page 4, line 2:
Following: "drugs"
Strike: "or aggravated driving under
the influence."
14. Page 4, line 3:
Following: "61-8-401"
Strike: "(1)"
15. Page 4, line 10:
Following: "conviction"
Strike: "under 61-8-401(1)"
16. Page 4, lines 18 and 19:
Following: "conviction"
Strike: "under 61-8-401(1)"
17. Page 5, line 4:
Strike: all of lines 4 through 7
18. Page 5, line 8:
Insert: "(4)"
Strike: "(5)"
19. Page 5, line 20:
Insert: "(5)"
Strike: "(6)"
20. Page 6, lines 20 and 21:
Following: "vehicle"
Strike: "aggravated driving under the
influence"
21. Page 8, line 20:
Following: "year."
Strike: remainder of line 20 through
line 22
22. Page 9, line 5:
Strike: All of lines 5 through 9
23. Section 5. 61-8-406, MCA, as amended to read:

61-8-406. Operation of motor vehicle by a person with alcohol concentration of 0.10 or more. It is unlawful and punishable as provided in 61-8-722 and

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 022285

[Section 6] for any person to drive or be in actual physical control of a motor vehicle upon the ways of this state open to the public while the alcohol concentration in his blood, breath, or urine is 0.10 or more.

24. NEW SECTION. Section 6.

Section 1. Additional sentence for alcohol-related driving offenses committed with aggravating circumstances.

(1) Where a person is convicted of 61-8-401 or 61-8-406 and any one of the following factors is present, an additional sentence shall be imposed pursuant to subsection (2) of this section:

(a) the offender drove 15 or more miles an hour above the speed limit;

(b) the offender had a blood alcohol concentration of 0.20 or higher;

(c) the offender operated his vehicle in willful or wanton disregard for the safety of persons or property; or

(d) the offender's driving was the proximate cause of injury to the person or property of another.

(2) A person convicted of 61-8-401 or 61-8-406 with one or more of the aggravating factors in subsection (1) of this section shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment of not less than 10 days or more than 30 days. Five days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(3) An additional sentence prescribed by this section shall run consecutively to the sentence provided for the offense.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 022285

BILL NO. SB 381

PROPOSED AMENDMENT TO SB 375:

1. Page 9, line 20.

Following: "(5)."

- Insert: "Extensions under this subsection may not extend the 3-year extension limitation provided in subsection (1)."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 022285
BILL NO. SB 375

PROPOSED AMENDMENTS TO SB 376:

Title
1. Page 3, line 12.
Following: "a person"
Insert: "who does not present an imminent threat of danger, but"

2. Page 7, line 18.
Following: "for"
Strike: "inpatient"

3. Page 12, lines 21 and 22.
Following: "proceeding"
Strike: remainder of line 21 through "commitment" on line 22

4. Page 14, line 5.
Following: "restrictive"
Strike: "course of"
Insert: "setting for"

5. Page 14, lines 11 and 12.
Following: "(3)."
Strike: remainder of line 11 through line 12 in its entirety

OK
Alternative 5. Page 14, line 12.
Following: "treatment"
Insert: "unless he is financially able"

6. Page 14, lines 17 and 18.
Following: "of the"
Strike: remainder of line 17 through "who" on line 18
Insert: "facility which"

7. Page 19, line 1.
Following: "proeedure"
Strike: "procedures"
Insert: "procedure"

8. Page 19.
Following: line 1
Strike: "subsections"
Insert: "subsection"
Following: "(1)"
Strike: "and (2)"

9. Page 19, line 5.
Following: "subsectiøn"
Strike: "subsections"
Insert: "subsection"
Following: "(1)"
Strike: "and (2)"

10. Page 19.
Following: line 6
Strike: "subsections"
Insert: "subsection"
Following: "(1)"
Strike: "and (2)"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 022285
BILL NO. SB 376

STANDING COMMITTEE REPORT

February 22

19 35

MR. PRESIDENT

JUDICIARY

We, your committee on

having had under consideration

SENATE BILL

No. 296

second reading copy (yellow)
color

REVISION OF FILING SECURITY INTERESTS IN MOTOR VEHICLES

Respectfully report as follows: That

SENATE BILL

No. 296

be amended as follows:

1. Page 4, line 4.

Following: "LIEN"

Insert: "notice, on a"

Following: "FORM"

Strike: ", "

2. Page 4, line 9.

Following: "the"

Insert: "accompanied by or"

3. Page 4, lines 12 through 14.

Following: "dealer." on line 12

Strike: remainder of line 12 through "party." on line 14

Insert: "If the approved notice form is transmitted to the division, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor."

AND AS AMENDED

DQ PASS

~~XXXXXXXXXX~~

Senator Joe Kazurek

Chairman.

STANDING COMMITTEE REPORT

Page 1 of 2

February 22 19 85

MR. PRESIDENT

JUDICIARY

We, your committee on

having had under consideration

SENATE BILL

No. 217

first reading copy (white)
color

REQUIRING ESTABLISHMENT OF MUNICIPAL COURTS IN CERTAIN CITIES

Respectfully report as follows: That

SENATE BILL

No. 217

be amended as follows:

1. Title, line 4.

Following: "ACT"

Strike: "REQUIRING"

Insert: "PROVIDING"

2. Title, line 5.

Following: "COURTS"

Insert: "MAY"

3. Title, line 6.

Following: line 5 "OF"

Strike: "10,000"

Insert: "20,000"

4. Page 1, line 22.

Following: "of"

Strike: "10,000"

Insert: "20,000"

5. Page 1, line 23.

Following: "may"

Strike: "must"

Insert: "may"

~~XXXXXXXX~~

~~XXXXXXXXXX~~

CONTINUED

Senator Joe Mazurek

Chairman.

Page 2 of 2

SENATE BILL NO. 217

6. Page 4, lines 11 and 12.

Following: "hearings" on line 11

Strike: remainder of line 11 through "cases" on line 12

7. Page 6, lines 7 and 8.

Following: "and-shall-be" on line 7

Strike: remainder of line 7 through "judge" on line 8

Insert: "shall be set by city ordinance"

8. Page 7, lines 5 and 6.

Strike: subsection (a) in its entirety

Re-number: subsequent subsections

9. Page 8, line 10.

Following: "to"

Strike: "70%"

Insert: "100%"

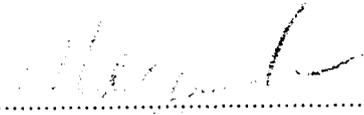
10. Page 8, line 19.

Following: line 18

Insert: "(4) After the payment required by subsection (2), the clerk of court shall distribute 40% of any amount remaining in the municipal court account to the counties comprising the judicial district in which the municipal court is located based upon the ratio of each county's population to the total population of the counties comprising the judicial district."

AND AS AMENDED

DO PASS


.....
Senator Joe Mazurek, Chairman

STANDING COMMITTEE REPORT

February 22

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on

having had under consideration

SENATE BILL

No. 375

first reading copy (white)
color

CONDITIONAL RELEASE OF MENTAL HEALTH PATIENTS - REVOCATION OF COND. RELEASE

Respectfully report as follows: That

SENATE BILL

No. 375

be amended as follows:

1. Page 9, line 25.

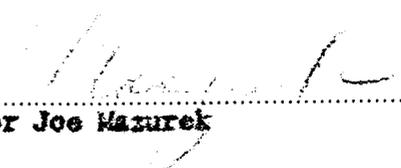
Following: "(5)."

Insert: "Extensions under this subsection may not extend the 3-year extension limitation provided in subsection (1)."

AND AS AMENDED

DO PASS

~~XXXXXXXXXX~~
~~DO NOT PASS~~


Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

Page 1 of 2

February 22

19 35

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL

No. 376

first reading copy (white)
color

COMMITMENT FOR OUTPATIENT TREATMENT

Respectfully report as follows: That SENATE BILL

No. 376

be amended as follows:

1. Page 3, line 12.

Following: "a person"

Insert: "who does not present an imminent threat of danger, but"

2. Page 7, line 14.

Following: "of"

Strike: "any person"

Insert: "a relative within the first degree of consanguinity or
affinity or a legal guardian"

3. Page 7, line 18.

Following: "for"

Strike: "inpatient"

4. Page 12, lines 21 and 22.

Following: "proceeding"

Strike: remainder of line 21 through "commitment" on line 22

5. Page 14, line 12.

Following: "treatment"

Insert: "unless he is financially able"

6. Page 14, lines 17 and 18.

Following: "of the"

Strike: remainder of line 17 through "who" on line 18

Insert: "facility which"

~~RELEASE~~

~~MINOR~~

CONTINUED

Chairman.

Page 2 of 2

SENATE BILL NO. 376

7. Page 19, line 1.
Following: "procedure"
Strike: "procedures"
Insert: "procedure"

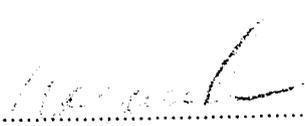
8. Page 19, line 2.
Following: line 1
Strike: "subsections"
Insert: "subsection"
Following: "(1)"
Strike: "and (2)"

9. Page 19, line 5.
Following: "subsection"
Strike: "subsections"
Insert: "subsection"
Following: "(1)"
Strike: "and (2)"

10. Page 19, line 7.
Following: line 6
Strike: "subsections"
Insert: "subsection"
Following: "(1)"
Strike: "and (2)"

AND AS AMENDED

DO PASS


.....
Senator Joe Mazurek, Chairman

STANDING COMMITTEE REPORT

February 22

19 85

MR. PRESIDENT

We, your committee on **JUDICIARY**

having had under consideration **SENATE BILL** No. **414**

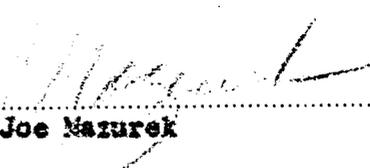
first reading copy (white)
color

PUBLIC ADMINISTRATOR TO BE APPOINTED CONSERVATOR OF CERTAIN SSI RECIPIENTS

Respectfully report as follows: That **SENATE BILL** No. **414**

DO PASS

~~SENATE BILL~~


.....
Senator Joe Mazurek

Chairman.