

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 6, 1985

The forty-second meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 6, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present with the exception of Senators Galt and Shaw, who were excused.

CONSIDERATION OF HB 390: Representative Dorothy Cody, sponsor of the bill, presented written testimony in its support (Exhibit 1). In addition, she left with the committee a copy of a court transcript to which she referred (Exhibit 2).

PROPOSERS: Kim Kradolfer, Assistant Attorney General and legal counsel for the Highway Patrol, testified this is a problem which the Highway Patrol occasionally faces. This will not affect licensing requirements, but they will be prohibited from driving a tractor drunk.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Yellowtail stated he is concerned that on page 1, line 17, we have stricken a vehicle driven by animal power. Representative Cody explained that question came up in the House hearing on this bill. The only thing she could say is probably horses had more sense than people. Senator Mazurek asked if this still would not apply to the tractor in the field, but only on the ways of the state. Representative Cody responded yes.

CLOSING STATEMENT: None.

Hearing on HB 390 was closed.

CONSIDERATION OF HB 210: Representative Mary Ellen Connelly, sponsor of the bill, testified this bill came about as a result of the increased DUI laws last session, after which they discovered a loophole. This would establish the criminal offense of vehicular assault while under the influence of alcohol or drugs. This would also establish a penalty of a fine not to exceed \$1,000 or imprisonment not to exceed one year or both.

PROPONENTS: Kim Kradolfer, Assistant Attorney General, spoke on the offense of negligent vehicular assault. There is one situation where this can occur. You can charge them with aggravated assault if they were not so drunk at the time that they had the necessary mental capability of acting purposefully and knowingly. She referred to the case of State v. Campbell, which was a negligent homicide with a death. In those instances where someone suffers serious bodily injury and does not die, there is nothing they can be charged with except a misdemeanor DUI offense. Candace Compton, representing the Highway Safety Division of the Department of Justice, testified in Montana we have approximately 3,000 injuries per year because of alcohol related accidents. This bill allows prosecution of individuals too intoxicated to prosecute otherwise.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Daniels asked what the rationale was for reducing the penalty from a felony to a misdemeanor. Representative Connelly replied the committee felt it was perhaps too strong. Senator Daniels stated he wondered about the jail sentences, because throughout the state, we don't have very many jails. Representative Connelly related how Flathead County handles this situation. Because they have had an increase in DUIs because of the task force, the jail sentence is imposed down the road a ways until there is room in the jail. They don't get off; they come back sometime in the future to serve their sentence. Senator Mazurek asked if the changes made in the current assault statutes have any impact on this. Ms. Kradolfer replied the difference between this and other assaults is the requisite mental state. Senator Blaylock asked why so much of the bill had been stricken. Ms. Kradolfer replied the bill tried to do three separate things. The third section deals with the penalties adopted last session. The pre-arrest breath test turned out to be more controversial than they thought it would be. Senator Towe asked if Section 61-8-401, MCA, defined what "under the influence" means. Ms. Kradolfer responded yes. The standard adopted by Montana courts was in State v. Kline, which says you have to show impairment. Senator Towe asked if the presumption of a .10 blood alcohol content applied. Ms. Kradolfer replied you would have to show they were guilty of DUI before applying this statute. Senator Towe asked if the presumption were in Section 61-8-401, MCA. Ms. Kradolfer replied yes. The .10 blood alcohol content is presumed drunk. From .05 to .10 is a rebuttable presumption.

CLOSING STATEMENT: Representative Connelly exhibited to the committee a pre-screening test from the Highway Patrol. She stated 23 other states have this at the present time. It costs 59¢ per test. A blood alcohol concentration of .10 is considered legally intoxicated. In Montana this last year, we had the lowest number of alcohol related deaths we have

had in the last ten years. They contribute that to the increased enforcement of the DUI laws. In a lifetime of driving, they consider you have a 50% chance of being involved in a DUI accident.

Hearing on HB 210 was closed.

CONSIDERATION OF HB 246: Representative Mary Ellen Connelly, sponsor of HB 246, testified this is just another result of the DUI laws passed last session. This would permit the seizure of a driver's license by the court on conviction. This is mainly a housekeeping bill.

PROPOSERS: Kim Kradolfer, Assistant Attorney General, testified this bill would save a lot of time. One thing the legislature did last session was provide for immediate seizure of a driver's license upon conviction. Bill Furor, Chief, Driver Improvement Bureau, Motor Vehicle Division of the Department of Justice, testified his office is the one that does this. Last year, 5,500 people fell into this category. If this bill were to pass, it will reduce paperwork in the division and reduce time for highway patrolmen to go get these licenses. Under current law, the judge does seize the licenses for those who are convicted of an offense for mandatory revocation. They are asking the same for mandatory suspensions.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked what the difference was between mandatory suspension and revocation. With revocation, do you have to take the test over again while with a suspension you can come back after a period of time and reclaim your license? Ms. Kradolfer replied suspension is simply a shorter period of time. Revocation means you have to come back and take the test over again. Senator Towe asked what kind of an offense this bill would affect. Ms. Kradolfer replied it would affect someone who was declared an habitual offender, a first offense DUI, and other alcohol-related offenses. Senator Towe asked what revocation would apply to, the habitual offender and a third offense DUI? Ms. Kradolfer replied also a second offense DUI.

CLOSING STATEMENT: Representative Connelly stated since two years ago, this was made mandatory, but the authority wasn't given to the judge. With the budget crunch, this would save a lot of time and expense for the Highway Patrol and the division.

FURTHER QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault addressed Barbara Claassen, Assistant Attorney General and attorney for the Motor Vehicle Division. He stated we run into problems where the judge feels the defendant is entitled to a restricted probationary license. It is

difficult to get the paperwork in and back. Some defendants are deserving of this. Senator Pinsoneault asked if there were something that could be done to step up that process. He asked if the judge had any authority to issue one on the spot. Ms. Claassen replied they must wait. Based on statute, you must first determine if a person is qualified to have a license. Other than changing the law that says the division is going to be the one issuing a license, she didn't see how the judge could do that. The law is also based on whether he attends a court school. Chairman Mazurek pointed out the committee had a bill coming in from Representative Gould that deals with the ability of the judge to issue a temporary permit for someone who loses his license. Senator Pinsoneault commented some fellows drive for their livelihood, and he feels this would be useful. She believes it should be cleared up when you have someone who comes into court and is convicted of a first DUI and is suspended. He is not apprehended at that time. Technically, they are not suspended when they walk out of the courtroom, only when the division receives the report.

Hearing on HB 246 was closed.

CONSIDERATION OF HB 600: Representative John Mercer, sponsor of the bill, testified it is very simple to allow us to consider out-of-state convictions at the time we determine whether a person has committed more than one offense. The main purpose for the bill is to get the people who are second and third time offenders, because those are the ones we are trying to get. Drunk driving statutes should be treated the same way, so the judge should be able to look at this information.

PROPOSERS: Duane Tooley, representing the Motor Vehicle Division, testified this would be another tool in the fight against drunk drivers. The way the current law is set up, it is a problem to see a man with multiple DUIs come into court and be charged with first offense. The intent is good to include all of his DUIs within the past five years. Barb Claassen, Assistant Attorney General representing the Motor Vehicle Division, testified there was nothing further she wanted to add except they are a proponent of this bill.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Crippen asked how much information we got as a state pertaining to previous convictions of driving under the influence from other states. If all of the laws are uniform, there would be no problem. He asked if the laws could be so much different in other states that if the trial were held in Montana, it may not have resulted in a conviction. Ms. Claassen replied according to the drivers' license compact which this state and most other states have

passed, the situation does not come up where we have a report of a conviction in another state that is different from ours. Senator Crippen asked if a person who is convicted in Montana would have an opportunity to enter testimony that his conviction in another state was under different circumstances or circumstances that if the trial were held in Montana it would not have resulted in a DUI charge and conviction. Ms. Claassen replied you are talking not about out-of-state procedure, but about our procedure. All states have their own procedure for attacking a conviction, assuming these other states have procedures whereby a conviction could be attacked. We need to be concerned whether under our procedure a person can do this. We have a procedure for an administrative appeal or an appeal to the district court. Senator Crippen stated an example would be the blood alcohol standard. Ms. Claassen stated we have to remember that is a presumption. That is not the bottom line for driving under the influence. The bottom line is set by case law. Also, the presumption may vary from state to state, but the definition for driving under the influence does not. Senator Crippen asked if there were a situation where the defendant could have an opportunity to appeal and show they had a much lower alcohol content required in another state, and he would not have been convicted under the laws in Montana, if that might be a defense. Senator Mazurek questioned if that were an administrative procedure, because that is what the judge is looking at when making the sentencing determination. Ms. Claassen answered yes. What we will have to let the defendant show is they have attacked that conviction in another state. Subsection (b) also confuses things by bringing in the civil aspect. Senator Towe stated the concern he has is the definition of conviction. Section 45-1-102, MCA, only defines conviction. The only thing we can do is look back to Section 61-8-401, MCA. The only definition of conviction is a violation of Section 61-8-401, MCA. In another state, you are not found guilty of violating Section 61-8-401, MCA. Senator Towe asked where you got the authority to do that. He felt you needed to include "a statute similar to 61-8-401" or the defense counsel will say they didn't violate Section 61-8-401, MCA, in another state. Ms. Claassen replied that would be proper if you have a concern about that. Representative Mercer commented he would be open to any amendments along those lines. Senator Brown asked how we would know someone has a driving record of a conviction in another state. Mr. Tooley explained the officer arresting an individual for DUI will check his record. The Law Enforcement Teletype System (LETS) allows him access to other state's records. If they request a record and find he lives elsewhere, they will write and ask for his driving record. Senator Brown asked if we didn't know he lived in another state, would it be possible this may not come to light? Senator Towe stated you can't get this through NCIC. You are not supposed to get that through any state computer because driving offenses are not permitted to be entered in that computer. Mr. Tooley stated the

normal check is on the state of previous residence. Senator Towe asked if you were asked by the State of Arizona if there were a DUI conviction on a Montana citizen, would you relay the information to him? Mr. Tooley replied yes. Senator Towe asked if you can do that under the Criminal Justice Information Act. Mr. Tooley replied yes. Senator Towe asked if there were statutory authority in the drivers' license compact to exchange that information. Mr. Tooley replied yes.

CLOSING STATEMENT: None.

Hearing on HB 600 was closed.

ACTION ON HB 390: Mr. Petesch explained what this really does is add farm tractors and implements of husbandry and exempts bicycles and animal drawn vehicles. Senator Blaylock commented he could see putting in the tractor. However, he questioned big combines going down the road. Senator Pinsoneault stated he thinks this is a step in the right direction. Mr. Petesch stated chapters 3 and 4 are licensing and registration. Chapter 8, part 4, is specifically DUI. For purposes of only the DUI statutes, it will take in all motor vehicles, farm tractors, and implements of husbandry. Senator Pinsoneault moved HB 390 be recommended BE CONCURRED IN. The motion carried with Senator Daniels voting in opposition.

ACTION ON HB 210: Senator Towe moved HB 210 be recommended BE CONCURRED IN. Mr. Petesch explained the effect of this bill is to double the penalty for misdemeanor assault with a motor vehicle. Currently you can be convicted of misdemeanor assault for negligently causing bodily injury to another with a weapon, and there are cases that define motor vehicle as a weapon. The motion carried with Senator Daniels voting in opposition.

ACTION ON HB 246: Senator Towe moved HB 246 be recommended BE CONCURRED IN. Senator Brown stated he was still confused about the whole business between suspension and revocation. Senator Mazurek stated under the current laws, if a person is convicted of DUI; he appears before the judge; the judge writes out the result of the hearing that the person was convicted and the sentence he was issued; and he sends it to the division. The division then goes out and collects that person's license. In those cases where you have that suspension, it would allow the judge to physically take the license. Ms. Kradolfer further explained suspension is for 90 days to a year. Senator Daniels asked what you do when the person doesn't have his driver's license with him. Senator Brown asked how you got your license back. Ms. Kradolfer replied the judge would send it in with the report of the conviction. Senator Mazurek explained when the suspension time is up, they mail it back to

him. In the meantime, he may apply for a probationary license. Senator Blaylock asked if a truck driver could immediately ask the judge or the department for a probationary license because he needs it. Ms. Kradolfer stated it will depend on the category he falls into. In some instances, the district court can make a decision, In others, it is discretionary with the division. In that instance, they are notified what procedure they can go through to apply for this. Senator Mazurek stated if you don't take the breath test, the patrolman can pull your license for 90 days. Ms. Kradolfer explained they give you 72 hours to get home. Senator Mazurek pointed out Representative Gould's bill would allow you to make application to the court that they need that license to make a living. He further explained a first offense suspension meant your license was suspended for six months. With a revocation, your license would be revoked for one to three years. The motion carried unanimously.

ACTION ON HB 600: Senator Towe moved HB 600 be amended as follows:

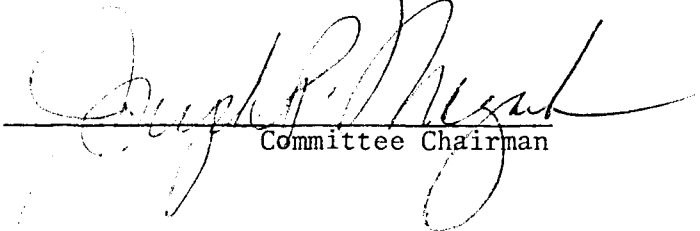
1. Page 3, line 4.
Following: "or"
Insert: "a similar statute in"
2. Page 4, line 22.
Following: "or"
Insert: "a similar statute in"

Senator Mazurek stated this applies to primarily Montana citizens who are traveling out of state. They post and forfeit the bond because they want to continue on their way. Maybe that is appropriate, but that is the bill. The motion carried unanimously. Senator Daniels asked if the rules of evidence were now so relaxed that you don't have a problem with identification of persons. He asked what evidence you can use now. Ms. Kradolfer replied she was not sure. Senator Pinsoneault asked if maybe under the compact, the rules of evidence are affected so that a prior conviction can be considered simply on its face. Ms. Kradolfer replied the compact requires a certified copy. Senator Daniels responded that doesn't mean anything. Ms. Kradolfer said sometimes someone says it wasn't he, but most of the time they don't. There are several cases where the court says if something is presented as evidence, the person has the right to rebut it or it is considered valid. Senator Towe asked who had the burden of proof of proving the other conviction. If you bring in a certified copy from another state, have you satisfied the burden of proof? Ms. Kradolfer responded you have presented prima facie evidence to the court. Senator Crippen asked what was done with convictions in the state of Montana. Ms. Kradolfer stated she hasn't seen it come up in misdemeanor cases, but generally it would be admissible as public record. Senator Towe stated he would like someone to address the

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question about the individual who is in another state and it is inconvenient for him to stay for trial and posts bond instead. Ms. Kradolfer replied you won't be arrested for DUI unless there were probable cause. Senator Towe moved HB 600 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senator Daniels voting in opposition.

There being no further business to come before the committee, the meeting was adjourned at 11:25 a.m.


Committee Chairman

ROLL CALL

SENATE JUDICIARY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 030685

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt			X
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw			X
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

DATE March 6, 1985

COMMITTEE ON Judiciary

HB 210, 246, 390, 600

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

Mr. Chairman, Members of the Committee, for the record, my name is Dorothy Cody, Representative of House District 20.

House Bill 390 is the result of a problem we have in our county with a gentleman who has been an habitual offender of the D.U.I. Laws. He has been a very difficult individual for the patrol, Sheriff's Officers and the Courts. As you can see by one page I have given you from a Court transcript that he has expressed an intent to drive his W.D.9 and there is little doubt that he will do so, drunk or sober.

This does not seem to be a singular incident as the Highway Patrol run into the problem more often than we would suspect and as the law now reads, they are unable to do anything.

House Bill 390 brings all vehicles into the D.U.I. Statutes except for animal powered and bicycles. I think it is a simple bill, easy to understand and will need no amending and I ask that you give it a Do Pass consideration.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 030685
BILL NO. HB 390



COUNTY OF ROOSEVELT
OFFICE OF
COUNTY ATTORNEY
WOLF POINT, MONTANA 59201

December 3, 1984

Dorothy A. Cody
Wolf Point, MT 59201

Re: Proposed Legislation

Dear Dorothy:

61-1-102 + 103

Incorporate
- 23-2-631

I have taken a renewed interest of late in a problem that arises with fair frequency to police and patrol.

At present, Sections 61-8-401 and 61-8-406, M.C.A., prohibit the operation of a motor vehicle by drinking drivers. The problem with the law is that, by definition of "motor vehicle", a number of vehicles such as farm tractors are excluded and are therefore lawful to drive, drunk or sober.

A number of years ago, there was an attempt made in the legislature to amend the definition which had the effect of complicating the law so badly it had no chance.

My proposal is to amend the laws to include the term "any vehicle" as well as "motor vehicle". Given the current popular climate to curb the drinking driver, I don't see any reason why that simple solution wouldn't be acceptable to everyone.

Enclosed are copies of previous correspondence in the matter. If you need some help or encouragement, talk to Majerus and Greely about it.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jim McCann".

James A. McCann
Roosevelt County Attorney

GMS:bdm

Enclosures

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 030685
BILL NO. HB 390

August 1, 1984

Mike Greely
Attorney General
215 N. Sanders
Helena, MT 59620

Dear Mike:

From time to time we are confronted with a problem in regard to the DUI statutes, 61-8-401 and 61-8-406, which I believe could be very easily remedied by a minor amendment.

Occasionally officers in our area encounter persons obviously under the influence of alcohol operating vehicles, not defined as motor vehicles under 61-1-102 (such as farm tractors, golf carts, quadwheelers, bicycles, etc.) on streets or highways.

It would be very helpful if the per se and DUI statutes were amended to include any vehicle.

Several years ago, a bill was in the legislature to redefine motor vehicle or something like that. It caused a tremendous problem because it conflicted with equipment, registration, licensing and drivers license areas of the laws and complicated the simple operation of a farm tractor at anytime to such an extent that the bill was defeated.

A drunk driver of some of these huge farm tractors can be a much greater menace to the public than, say, a drunk driver of a VW.

I would appreciate hearing your comments to this suggestion.

Very truly yours,

James A. McCann
Roosevelt County Attorney

JAM:bdm

cc: Marc Racicot
and

Motor Vehicle Division
Legal Counsel

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 030685

BILL NO. HB 390

1 DEFENDANT: No I haven't. I haven't been driving.

2 THE COURT: If you want to plead
3 guilty today, I think you are in
4 better shape to do it. However, if
5 you want to have a jury trial, Okay,
6 what do you want to do.

7 DEFENDANT: Will you put me in jail then today?

8 THE COURT: I will put you in jail
9 today, yes, for ten days.

10 DEFENDANT: What do you think, Pete?

11 MR. PETE SPAAECK: Sure, why not.

12 DEFENDANT: Up to you.

13 MR. PETE SPAAECK: No it is up to you.

14 DEFENDANT: And then is it over with?

15 THE COURT: Well if you don't drive.

16 DEFENDANT: Well I am not driving now. I said that, that I
17 am not driving now.

18 THE COURT: And if you did, you won't
19 have a license for a long long time.

20 DEFENDANT: ~~Will I be allowed to drive?~~ am I allowed to drive?

21 ~~Is that for?~~

22 THE COURT: I don't know.

23 DEFENDANT: Are Al and Vickie still over there?

24 THE COURT: Al & Vickie who?

25 DEFENDANT: Over in the jail there?

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 030685
BILL NO. HB 390

1 IN THE DISTRICT COURT OF THE FIFTEENTH
2 JUDICIAL DISTRICT OF THE STATE OF MONTANA,
3 IN AND FOR THE COUNTY OF ROOSEVELT

4 * * * * *

5 THE STATE OF MONTANA,

6 against

7 ANKER MARTINUS SPAAECK,

8 Defendant.

9 * * * * *

NO. 1108-C

TRANSCRIPT OF THE
SENTENCING HEARING
HELD ON NOVEMBER
27th, 1984

13 TUESDAY, November 27th, 1984
14 JUDGES CHAMBERS
15 Roosevelt County Courthouse
16 Wolf Point, Montana

22 HEARD BEFORE HONORABLE M. JAMES SORTE, DISTRICT
23 JUDGE OF THE STATE OF MONTANA, IN AND FOR THE
24 COUNTIES OF SHERIDAN, DANIELS AND ROOSEVELT

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 030685

BILL NO. HB 390

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APPEARANCES

FOR THE STATE OF MONTANA:

Mr. James A. McCann, Esq.,
Roosevelt County Attorney
112 Main
Wolf Point, Montana 59201

NO COUNSEL APPEARED ON BEHALF OF MR. ANKER MARTINUS SPAAECK

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 030685
BILL NO. HB 390

1 THE COURT: Okay, let the record
2 show that this is the 27th of
3 November, and it is now 9:28 A.M.,
4 and we are here in the matter of the
5 State of Montana versus Anker
6 Martinus Spaabeck. The County
7 Attorney is here representing the
8 State of Montana and Mr. Spaabeck is
9 here and he was ordered to be here
10 at 9:00 o'clock but the roads were
11 bad this morning and he couldn't get
12 here at nine.

13 DEFENDANT: They were icy, and Pete drove.

14 THE COURT: And we still have this
15 matter of a third time DWI and I
16 rather suspect that you should have
17 a lawyer here with you.

18 DEFENDANT: I can't afford one, and the last one that I had
19 when I was over there, he didn't show up, and I requested one
20 when I was up here the last time.

21 MR. MCCANN: No you never requested one.

22 *Spaabeck:* ~~THE COURT:~~ Well I did over at the
23 jail. I spent five hundred dollars
24 on one lawyer and he run out on me.
25 'That was McCarvel.

1 THE COURT: You have any property or
2 funds to hire one?

3 DEFENDANT: No I don't, I have two cents in my pocket.

4 THE COURT: Don't you own some
5 property over in Froid?

6 DEFENDANT: No Pete owns that.

7 THE COURT: There is absolutely nothing
8 in here about you asking for a lawyer.
9 I asked you about getting a lawyer
10 and you said that you would. I said,
11 "....don't you want to talk to a
12 lawyer about this?" and you said,
13 "Ask Pete". Then Pete asked you,
14 "Don't you want to talk to a lawyer
15 about this?" and you said "Yes, I
16 will talk to a lawyer. Who is our
17 lawyer?". Then I said, "Well you have
18 to get one. I guess we could
19 continue this until he gets one."
20 Then Mr. McCann said "We did that
21 three weeks ago, he said that he was
22 going to get a lawyer and here it is
23 almost a month now.". And then I
24 asked you, "Do you want a jury trial
25 over this?" and you said "I will go

SENATE JUDICIARY COMMITTEE

CALMER A. ERSNESS
OFFICIAL COURT REPORTER
P. O. BOX 978
WOLF POINT, MONTANA 59201

EXHIBIT NO. 2
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BILL NO. HB 390

1 to the highest court there is.".

2 And then I said "Well, you've got to
3 start here first...", and then you
4 said "I guess I need some time" and
5 you've done nothing since that time.

6 DEFENDANT: I hired McCarvel during the time I was in there
7 for protective custody and ---

8 THE COURT: Where was this?

9 MR. MCCANN: Here in the jail, when he was picked up on this
10 insanity matter.

11 DEFENDANT: Sure, and I took the insanity test and I passed
12 that with flying colors and I gave him five hundred dollars
13 on that one. I get tire giving lawyers five hundred dollars
14 and they run out on me. I told him that I wanted him to
15 help me on this DWI and he said "The hell with you.".

16 MR. MCCANN: Anker, when you say you passed this insanity
17 test with flying colors, that is partly true, but the finding
18 of the psychologist shows that you are an alcoholic, and just
19 as soon as you got a couple of drinks and ---

20 DEFENDANT: You were not there.

21 MR. MCCANN: I've seen the written report that he filed with
22 this Court.

23 DEFENDANT: You may have seen the written report but you wasn't
24 there when I was there.

25 MR. MCCANN: The last time that you were here ---

SENATE JUDICIARY COMMITTEE

1 DEFENDANT: Mr. McCann, I called him up and I asked him to
2 alleviate that a little bit. His name is ...

3 PETE SPAABECK: Was that Bill Jones?

4 DEFENDANT: Yes, Bill Jones. Yes, I called him over the weekend
5 and I told him to alleviate that statement in the report there.

6 MR. MCCANN: He can't do that. Now you also called other
7 people over the weekend, didn't you.

8 DEFENDANT: No I didn't. Who did I call?

9 MR. MCCANN: You call Officer Neumiller's wife.

10 DEFENDANT: No I did not.

11 MR. MCCANN: And Officer, right?

12 DEFENDANT: Me?

13 MR. MCCANN: Yes.

14 DEFENDANT: I don't even have a phone. They took my phone
15 out when I was in jail, they took my pickup and someone else
16 took me home, and I didn't have much to drink. I am pretty
17 sober. Pretty sober.

18 MR. MCCANN: Did you see Judge Bradley on Sunday?

19 DEFENDANT: Yes -- on Sunday?

20 MR. MCCANN: At her house.

21 DEFENDANT: Not at her house though, but I talked to her,
22 and I said I will see you in Court Monday.

23 THE COURT: Well, are you ready to go
24 to trial now if we have a jury here.

25 DEFENDANT: What?

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 030685

BILL NO. HB 390

1 THE COURT: Are you ready to go to
2 trial right now, if we have a jury
3 here.

4 DEFENDANT: Well, what do you want me to do? I just want to
5 be free. I just want to be free, that's all.

6 THE COURT: You know what I want you
7 to do? I want you to go somewhere
8 and get dried out.

9 DEFENDANT: All right, I will do that. Where do you want me
10 to go? If you want me to go to Glasgow, I will go there.

11 THE COURT: This is the first time ---

12 DEFENDANT: It is cold out there, and I am tired paying heat
13 bills. I have cost the county a lot of money, and it has
14 cost me a lot of money too. It won't bother me to go to
15 Glasgow, or go to Meade or what. Now that I have been home
16 for a couple of weeks now, it is not so nice outside here now.
17 It is getting cold outside there.

18 MR. MCCANN: It is not a matter of going, Anker, but that you
19 cooperate with the program when you get there. You won't do
20 that, will you?

21 DEFENDANT: I have done that.

22 MR. MCCANN: You won't admit that you have a drinking problem,
23 Anker, will you?

24 DEFENDANT: I've had that all my life, Mr. McCann.

25 MR. MCCANN: Well why don't you do something about it and
cooperate with them?

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 030685

BILL NO. 48 390

1 A I cooperated with them. I feel sorry for those
2 guys in there. They are a lot worse off than I am.

3 MR. MCCANN: Well I don't know about that.

4 DEFENDANT: Jim, I've never hurt anybody, I've never forced
5 anybody to do nothing, I've never shot anybody, and I've
6 never had an accident either.

7 MR. MCCANN: But you keep threatening to do all of those
8 things.

9 DEFENDANT: I've never hurt anybody.

10 THE COURT: Well maybe you've never
11 had an accident but how many accidents
12 do you want? Do you want one with a
13 family of five in it, does that sound
14 logical to you?

15 DEFENDANT: I've never had an accident.

16 THE COURT: You've never done it, but
17 what do you want to do, wait until
18 you've killed somebody in an accident?
19 Then you can come in and say I was
20 wrong, I won't do that anymore. Is
21 that logic?

22 DEFENDANT: I have been walking ten miles a day now. I
23 don't have any vehicle to go around in. I have to walk, and
24 I enjoy being outside.

25 THE COURT: I don't know. Is there

SENATE JUDICIARY COMMITTEE

1 a possible chance of some kind of
2 treatment? Is that what you want to
3 do, go back to Fort Meade?

4 DEFENDANT: I will go back to Meade, any time.

5 MR. MCCANN: Will they take you back?

6 DEFENDANT: You bet they will. I'll go back to Meade.

7 THE COURT: How long were you there
8 before?

9 DEFENDANT: 29 days.

10 MR. MCCANN: No that's not right, Anker, you were there only
11 eight to ten days.

12 DEFENDANT: How long?

13 MR. MCCANN: You were supposed to be there 29 days, but you
14 didn't stay there that long.

15 MR. PETE SPAABECK: He was there all but seven days.

16 MR. MCCANN: But you never ever once cooperated with them
17 during the time you were there.

18 DEFENDANT: What do you mean? Cooperated with them?

19 MR. MCCANN: Go through their program there.

20 DEFENDANT: I went to every class. I did everything except
21 say that I was an alcoholic ---

22 MR. MCCANN: That's correct.

23 DEFENDANT: And they never even asked me that either. They
24 said "you look like you're Okay, you don't need that program.

25 MR. MCCANN: That is not what they told me.

SENATE JUDICIARY COMMITTEE

1 DEFENDANT: I've been four months dry this year. I spent
2 two months in the Veteran's Hospital in Miles City to get
3 operated on, and I spent two months in the God Damm jail
4 over here, that's six months, isn't it? That's a long time
5 without a drink. Then you say I'm an alcoholic.

6 MR. MCCANN: Yes.

7 DEFENDANT: If I was an alcoholic I would be drinking all
8 the time. Anytime you go a half year without a drink -- how
9 long have you been without a drink, Mr. McCann?

10 MR. MCCANN: I don't have to answer that.

11 DEFENDANT: I know you can't, you can't answer that.

12 MR. MCCANN: Have you been able to talk to him, Pete?

13 MR. PETE SPAABECK: Yes.

14 MR. MCCANN: What does he say about this?

15 MR. PETE SPAABECK: Well the last four or five days he has
16 been sober, outside maybe two or three beers. No whiskey
17 and tends to business.

18 DEFENDANT: I fixed my house up.

19 MR. PETE SPAABECK: I still think though that he has an
20 alcoholic problem.

21 THE COURT: That is my understanding
22 also. I don't know. The last time
23 you were here you said you wanted to
24 plead guilty and I said I wouldn't
25 accept it and I wanted you to talk to

SENATE JUDICIARY COMMITTEE

1 a lawyer because this is a very
2 serious offense, and this is the
3 third DWI and you lose your license
4 and you have to spend at least ten
5 days in jail if you plead guilty,
6 and at that time you were going to
7 talk to a lawyer, and we talked about
8 having a jury trial. I really didn't
9 have too much hope of you coming in,
10 but if you want a jury trial, we can
11 get a jury in here by tomorrow
12 morning, if that is what you want to
13 do.

14 DEFENDANT: I am tired of all of this, this is all costing
15 the county a lot of money and also costing me a lot of
16 money too.

17 THE COURT: What do you want to do
18 with this? Do you still want a jury
19 trial, we could get one in here by
20 tomorrow morning because we can get
21 on the phone and have a jury in here
22 by tomorrow morning.

23 DEFENDANT: Well give me an alternative on that, will you?

24 THE COURT: I don't know what other
25 alternative I've got.

SENATE JUDICIARY COMMITTEE

1 DEFENDANT: Well, turn me loose today and let me go, and
2 just forget about all of this.

3 THE COURT: I can let you go until
4 tomorrow morning, and you can come
5 back here and have a trial for DWI,
6 and if you are convicted of that, you
7 will have to spend ten days at least
8 in jail.

9 DEFENDANT: I've already spent ten days in jail.

10 THE COURT: That was for other things.
11 This is why, when I went over this
12 on the 7th of November, I really
13 don't think that you understood all
14 of this.

15 DEFENDANT: Well will you give me ten days in jail today and
16 then it is over with?

17 THE COURT: I could. If you plead
18 guilty to this, and then I could, and
19 you would also lose your license for
20 a period of no less than one year.

21 DEFENDANT: I know that.

22 MR. MCCANN: He has already lost that, but this would lose
23 it for you for three more for this.

24 THE COURT: You have not been driving
25 now, have you?

SENATE JUDICIARY COMMITTEE

1 DEFENDANT: No I haven't. I haven't been driving.

2 THE COURT: If you want to plead
3 guilty today, I think you are in
4 better shape to do it. However, if
5 you want to have a jury trial, Okay,
6 what do you want to do.

7 DEFENDANT: Will you put me in jail then today?

8 THE COURT: I will put you in jail
9 today, yes, for ten days.

10 DEFENDANT: What do you think, Pete?

11 MR. PETE SPAABECK: Sure, why not.

12 DEFENDANT: Up to you.

13 MR. PETE SPAABECK: No it is up to you.

14 DEFENDANT: And then is it over with?

15 THE COURT: Well if you don't drive.

16 DEFENDANT: Well I am not driving now. I said that, that I
17 am not driving now.

18 THE COURT: And if you did, you won't
19 have a license for a long long time.

20 DEFENDANT: Well I've got a WD9, am I allowed to drive a
21 tractor?

22 THE COURT: I don't know.

23 DEFENDANT: Are Al and Vickie still over there?

24 THE COURT: Al & Vickie who?

25 DEFENDANT: Over in the jail there?

SENATE JUDICIARY COMMITTEE

1 THE COURT: Is he still over there?

2 DEFENDANT: I miss my old pinocle player. He is in playing
3 solitary over there now probably.

4 THE COURT: Well I will let you plead
5 guilty today if you want to do that.

6 I don't think that last time you
7 were in the right mental state, and
8 if you want to do that today, I will
9 let you do that. I will give you a
10 minimum of ten days in the jail.

11 MR. MCCANN: Thirty days, with all but ten days suspended.

12 THE COURT: Yes.

13 MR. PETE SPAABECK: The last time, he put in ten days for that
14 last time, the DWI.

15 DEFENDANT: I thought that it was ten days for not coming
16 back to court. It is just like those damm alcoholic
17 counsellors over here.

18 MR. MCCANN: What about him?

19 DEFENDANT: What about it, I will tell you about him. He
20 came over there to counsel me and he said -- I was feeling
21 bad, you know, as I had to go to jail and I couldn't get out
22 of jail, and I felt real lousy that day. My best friend's
23 funeral was that day, and I wanted to go to the funeral. I
24 said that I didn't have time to argue with you today, my
25 best friend is getting buried right now and so would you please

SENATE JUDICIARY COMMITTEE

1 come back on Monday and I will talk to you. Monday came
2 along and he wasn't there. Tuesday came along and he wasn't
3 there, and then when I left the jail, I went down to see him
4 and I asked him how come you didn't come back to see me, and
5 he said "Oh, it was Veterans Day, that's a holiday". 'Here
6 is no holidays in jail you know. The man made a promise to
7 me and he didn't come, and he didn't come either on Monday
8 or on Tuesday like he said he was going to. He told me that
9 he was coming back on Monday to counsel me and I told him that
10 I would be glad to take the test. I told him that, that I
11 would be glad to take the test. He never showed up. I don't
12 think the man is worth his word, do you, Mr. McCann? I
13 really don't. Will you talk to him on that?

14 MR. MCCANN: Yes I can. Do you want to go back to jail or
15 have a trial, Anker?

16 DEFENDANT: I don't care if I ever see that man again. He
17 broke his promise, Sir. What do you think, Sir?

18 THE COURT: Sure.

19 MR. MCCANN: Is that what you want to do, Anker?

20 DEFENDANT: What?

21 MR. MCCANN: Do you want a trial, or go back to jail today?

22 DEFENDANT: I am tired of fighting this, fighting lawyers,
23 tired of the whole damm thing.

24 THE COURT: I am too.

25 DEFENDANT: You've spent more time on me, I know that ---

SENATE JUDICIARY COMMITTEE

1 THE COURT: You're right there.

2 DEFENDANT: But this is felony, this is a misdemeanor. There
3 are some hard core people over there. I saved an Indian's
4 life over there, remember that? And I save a guy from trying
5 to escape over there. You remember that? I guess he was a
6 federal guy, and he finally went down to Glendive and raised
7 all kind of hell down there, but I saved two people over
8 there.

9 THE COURT: Well what do you think you
10 want to do today?

11 MR. PETE SPAABECK: May I see you alone, Judge on this?

12 THE COURT: Certainly.

13 AT THIS TIME, The Judge, the County Attorney and Mr.
14 Pete Spaabeck left the Judge's Chambers and consulted on
15 this matter outside the hearing of this Reporter, the
16 Defendant and the Clerk of Court. Thereafter they did
17 return and the following proceedings were had:

18 THE COURT: Well, what do you want to
19 do on this, do you want to enter a
20 plea of guilty today and I will give
21 you ten days in jail, and during that
22 time, we will try to get you back into
23 Meade?

24 DEFENDANT: I suppose so.

25 THE COURT: Well if we do that, Jim

SENATE JUDICIARY COMMITTEE

1 here will try to look into getting
2 you back into Meade. Do you know
3 anyone down there Pete?

4 MR. PETE SPAABECK: I know the counsellor down there is all.

5 THE COURT: They could help you down
6 there if you cooperate with them.

7 DEFENDANT: Wayne O'Connor is his name. I called up
8 Denver to get my eye ball scraped and they said they could
9 have me down there in a week. Could I postpone this for
10 a week and then come in and spend my ten days in jail?

11 MR. MCCANN: No.

12 DEFENDANT: Could I spend the ten days on weekends?

13 MR. MCCANN: No.

14 DEFENDANT: Give me some leniency.

15 MR. MCCANN: We have already done that. You could get a lot
16 more than ten days you know. You could get a year or so. I
17 believe it is a year.

18 THE COURT: It is.

19 MR. MCCANN: Ten days is absolute rock bottom.

20 THE COURT: I'll give you ten days
21 today and try to get you into Meade
22 and you can get into a program there.

23 DEFENDANT: Okay. I will be glad to be back in Meade.

24 THE COURT: If you do that, I will
25 consider releasing the five hundred

SENATE JUDICIARY COMMITTEE

1 bond if you complete the program
2 down there.

3 DEFENDANT: What?

4 THE COURT: If you complete the
5 program down there I would consider
6 releasing the five hundred dollars.
7 That is pretty good wages, better
8 than you are making right now.

9 DEFENDANT: Fine.

10 MR. PETE SPAABECK: They did send him a letter for him to come
11 up there for the annual reunion, so they don't consider him
12 an outcast or anything like that.

13 DEFENDANT: Sure I was invited back down there.

14 THE COURT: Well they are not going to
15 invite you back here, Anker.

16 DEFENDANT: I know that, I know that, Judge Sorte.

17 THE COURT: Now you have been given a
18 copy of this charge that have been
19 filed here, haven't you?

20 DEFENDANT: Yes.

21 THE COURT: And you do understand
22 what you have been charged with?

23 DEFENDANT: JudgeSorte, I still don't think that I was due
24 here on the 6th. Remember I said that I wanted to vote for
25 Mondale and election day was on the 6th. Remember I said that
I wanted to vote, vote for Mondale?

SENATE JUDICIARY COMMITTEE

1 MR. MCCANN: No that is not right. I remember that you said
2 you wanted to vote.

3 DEFENDANT: That's right, I said I wanted to vote for Mr.
4 Mondale.

5 MR. MCCANN: You said you wanted to vote, but you were still
6 to report back here in court, remember that?

7 DEFENDANT: Well Judy called up, and ---

8 MR. MCCANN: Well we are getting off the track here.

9 THE COURT: Well do you want to go
10 through with this or just argue about
11 it?

12 DEFENDANT: I don't want to argue.

13 THE COURT: Now you have been charged
14 with driving while intoxicated for
15 the third time, is that right?

16 DEFENDANT: Pardon?

17 THE COURT: You have been charged with
18 driving for the third time while
19 intoxicated, is that right?

20 DEFENDANT: Right.

21 THE COURT: And I've told you what the
22 penalty would be, ten days in the
23 county jail -- one year in the county
24 jail and a thousand dollar fine, or
25 both, but that you could spend a

SENATE JUDICIARY COMMITTEE

CALMER A. ERSNESS
OFFICIAL COURT REPORTER
P. O. BOX 978
WOLF POINT, MONTANA 59201

EXHIBIT NO. 2
DATE 030685
BILL NO. HB 390

1 minumum of ten days, and you
2 have had lots of time to think
3 about this case, and I've asked
4 you whether you want to plead
5 guilty today, or if you want to
6 have a jury trial, and I believe
7 you said that you don't want one,
8 and I will have to tell you that
9 if you plead guilty today, you
10 will lost some of your constitutional
11 rights; you will waive a right to
12 a speedy trial, a trial by a
13 jury; the right to see and
14 question witnesses against you;
15 you can request witnesses and
16 evidence in your favor; that you
17 may testify or remain silent; that
18 you may call witnesses in your
19 favor and all evidence in your
20 favor; the right to a qualified
21 lawyer at and after trial; and
22 an instruction to the jury that
23 you are presumed innocent; an
24 instruction to the jury that the
25 State must prove you guilty beyond

SENATE JUDICIARY COMMITTEE

CALMER A. ERSNESS
OFFICIAL COURT REPORTER
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WOLF POINT, MONTANA 59201

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BILL NO. HB 390

1 a reaonable doubt. Now if you
2 enter a plea of guilty, you will
3 waive all of these fights. Now
4 if you enter a plea of guilty,
5 you will waive all of thse rights,
6 do you understand that?

7 DEFENDANT: Yes.

8 THE COURT: And if you say that
9 you are guilty, that there will
10 be no trial by jury and it will
11 be up to me to sentence you, do
12 you understand that?

13 DEFENDANT: Yes.

14 THE COURT: Then what is your
15 plea?

16 DEFENDANT: Guilty.

17 THE COURT: All right, then I
18 will accept your plea of guilty,
19 and you will have to spend ten
20 days in the county jail. If you
21 go to Fort Meade and complete the
22 program there, I will give you back
23 your five hundred dollars, which
24 was put up for bon, -- if you
25 complete the program there.

SENATE JUDICIARY COMMITTEE

1 DEFENDANT: All right.

2 THE COURT: Okay, I believe that
3 the defendant understands his
4 constitutional rights and he has
5 waived his rights after entering
6 a plea of guilty to the charge,
7 so that will be the sentence then,
8 ten days in the county jail -- or
9 one year in the county jail with
10 all but one year suspended, and
11 then the county officials here
12 will try to get you into Fort
13 Meade and you complete the
14 treatment program there, whatever
15 that will be, and if you are
16 successful in that completion of
17 the program there I will consider
18 returning the five hundred dollars,
19 Okay?

20 DEFENDANT: Fine.

21 MR. MCCANN: While we are still on the record, if the Court
22 please, I would like to file in this matter the statement
23 of the arresting officer so that the record here will be
24 more complete.

25 THE COURT: Okay.

SENATE JUDICIARY COMMITTEE

(Same is delivered to the Court)

THE COURT: I certainly hope that you can do that down there. We are not hassling you -- I guess we are hassling each other here, and ---

DEFENDANT: I know that. It is no fun for me either.

THE COURT: This isn't fun for any of us.

DEFENDANT: I know that. It has been a long hassle, that is for sure.

MR. MCCANN: Anker, then you can go out with the officer here and go over to the jail.

DEFENDANT: Okay.

MR. MCCANN: I will go down there right now and see Jerry.

DEFENDANT: Okay, thank you.

WHEREUPON this hearing was CONCLUDED.

---oOo---

COURT REPORTER'S AFFIDAVIT

I, Calmer A. Ersness, do hereby certify that I am the Official Court Reporter who reported by means of shorthand, the above mentioned hearing, and that this transcript is a true and correct transcription of my shorthand notes, to the BEST OF MY ABILITY.

Dated this 30th day of November, 1984.


Calmer A. Ersness Court Reporter

SENATE JUDICIARY COMMITTEE

CALMER A. ERSNESS
OFFICIAL COURT REPORTER
P. O. BOX 978
WOLF POINT, MONTANA 59201

EXHIBIT NO. 2
DATE 030685
BILL NO. HB 390

STANDING COMMITTEE REPORT

March 6

19 35

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 210

third reading copy (blue)
color

(Senator Brown)

GENERALLY STRENGTHENING DRUNK DRIVING LAWS

Respectfully report as follows: That HOUSE BILL No. 210

BE CONCURRED IN

~~XXXXXXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Marurek

Chairman.

STANDING COMMITTEE REPORT

March 6

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on.....

HOUSE BILL

246

having had under consideration.....

No.....

third

reading copy (

blue

color

(Senator Pinsonneault)

SEIZURE OF DRIVER'S LICENSE ON CONVICTION REQUIRING MANDATORY SUSPENSION

HOUSE BILL

246

Respectfully report as follows: That.....

No.....

BE CONCURRED IN

~~SENATOR~~

~~SENATOR~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 6

19 35

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 390

third reading copy (blue)
color

(Senator Crippen)

BRINGING ALL VEHICLES UNDER LAW ON DRIVING UNDER INFLUENCE

Respectfully report as follows: That HOUSE BILL No. 390

BE CONCURRED IN

UNOPPOSED

AND NOT DEBATED

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 6 1985

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 600

third reading copy (blue color)

(Senator Mazurek)

INCLUDE OUT-OF-STATE CONVICTIONS FOR DUI & BROADEN CHARGING ON DUI

Respectfully report as follows: That HOUSE BILL No. 600

be amended as follows:

1. Page 3, line 4.

Following: "or"

Insert: "a similar statute in"

2. Page 4, line 22.

Following: "or"

Insert: "a similar statute in"

AND AS AMENDED

BE CONCURRED IN

SENATOR

SENATOR

Senator Joe Mazurek

Chairman.