MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 9, 1987

The thirty-eighth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 9, 1987 by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All member were present.

CONSIDERATION OF HB 396: Representative Robert Pavlovich of Butte introduced HB 396 (see Exhibit 1).

PROPONENTS: Larry Majerus, Department of Justice, said the bill is just a clarification in the drivers suspension law.

OPPONENTS: None

DISCUSSION ON HB 396: Senator Mazurek asked what an example would be of fraudulent use of a drivers license. Mr. Majerus said someone who uses another person's license to get into a bar while under the drinking age. He said the bill is for the guy that let the under age youth use the license to get into a bar (Exhibit 1A).

Representative Pavlovich closed on the bill.

CONSIDERATION ON HB 558: Representative Bud Gould of Missoula presented HB 558 to the committee (see Exhibit 2).

PROPONENTS: Marc Racicot, Montana County Attorney Association, explained the history of the current law. He said in the past, the common law wanted a person responsibile for his voluntary acts including consuming of alcoholic beverages. He said there were two exceptions to that: if a person was compelled by another to consume alcohol and or a person was deceived into drinking the alcohol. He said the alcohol involvement in a crime was used in the past to determine the defense. He said there are 16 states that prohibit the use of involuntary intoxication in criminal actions. He said the more one drinks while driving the more in trouble a person is, but that is exactly the opposite when it comes to criminal crimes. He said the more a person has to drink while involved in a criminal crime, the easier the conviction. He said this happens most often in homicide cases where intoxication can be used as a defense.

OPPONENTS: None

DISCUSSION ON HB 558: Senator Halligan questioned why the involuntary

drugged part is striken from the bill. Mr. Racicot said the drugged part was eliminated because those involved in drafting the bill felt that whether it was drugs or alcohol it still meant that the person was under the influence. He said the word "involuntary" was striken because of section 45-2-202. He said since the statute was already there, the drafters decided to take this one out.

Senator Pinsoneault asked if this bill will effect the sentensing process. Mr. Racicot felt the bill would do nothing to the sentensing process.

Senator Halligan asked how the defendant will prove that he was forced or deceived into drinking alcohol. Mr. Racicot replied the defendant will not have a second hearing on this; he must take the burden in proving it during the only hearing.

Senator Mazurek inquired what part was purposed by the House for this bill. Mr. Racicot left that language for the committee to look at (see Exhibit 3).

Representative Gould closed.

CONSIDERATION ON HB 509: Representative Ted Schye of House District #18 introduced HB 509 (see Exhibit 4 and 4A).

PROPONENTS: David Lackman, Montana Public Health Association and American Public Health Association, supported the bill (see witness sheet).

Fred Hasskamp, Montana Aeronautics Division, favored the bill because the FFA is unable to enforce the federal law that is 91.11, which deal with alcohol and drugs. He said the Montana law enforcement can not arrest a drunk pilot because there is no statute for an arrest in this area. He said the states have to put a statute in the books to follow the federal law.

Authur Wells, Federal Aviation Administration, said the FFA purposed to change the law in 1981 to add .04 as a maximum percentage for alcohol to the existing eight hours from "bottle to throttle" rule that they FFA had at that time. He said the review on this idea did not turn out very well. He stated that in 1986 the final rule adopted required any crew member to submit to a test conducted by a local law enforcement officer, and not a member of the FFA like it was purposed in the 1981 version. He said the FFA will take action against anyone who will not take the test. He said alcohol will have an affect on a person flying more so then one that is driving because of the lack of oxygen.

OPPONENTS: None.

DISCUSSION ON HB 509: Senator Pinsoneault asked why the word "civil" is

in line 13. He said whether the plane is operated by the military or civil public the offense should be the same. Representative Schye said that would be fine to take that part out. Mr. Wells said the FFA would like to keep it just "civil". Senator Mazurek asked why the bill could not cover both civil and military in the state of Montana. Mr. Wells said the FFA has no jurisdiction over military aircraft.

Senator Pinsoneault suggested on page 3, line 13, after the word "crew member" that the words "or as part of the maintainance, safety or routine relocation of an aircraft on the ground, it is towed by a person who". Senator Pinsoneault said a person towing and aircraft should follow under this purposed statute. Representative Schye felt that should follow under another statute. Senator Pinsoneault felt the groundcrew could be more liable to be drinking on the job.

Senator Beck asked if there is a real big difference in flying an airplane and driving a car because the alcohol rate for driving is .01 and the bill purposes and alcohol rate of .04 for flying and airplane. Representative Schye said the .04 came from the FFA. He also said the lack of oxygen in a plane makes a big difference while flying under the influence.

Representative Schye closed by saying that Montana has more airplanes per capita in the U.S.

CONSIDERATION OF HB 163: Representative John Mercer of Polson introduced HB 163 (see Exhibit 5).

PROPONENTS: David Lackman, Montana Public Health Association, supported the bill (see Witness sheet).

Kathy Seely, Department of Justice, said one of the most important parts of this bill is on page 1, lines 19 and 20. She said this gives a high standard of proof.

Mark Murphy, Attorney General, presented to the committee a case on this subject (City of Helena, vs Davis) (see Exhibit 6).

David Hull, City of Helena, stated that he was the attorney involved in the appeal of the Davis case that Mr. Murphy handed out. He stated there are two separate burdens of proof in this statute; the fact that if you have been drinking, can you drive safely or if you have been taking drugs and drinking, can you drive safely. He said the appeal was based on the fact that it is unconstitutional to have two separate burdens of proof. He supported the bill.

Mikey Nelson, Chairman of the Lewis and Clark DUI task force, supported the bill.

Rayleen Beaton, STOP DUI task force, supported the bill also.

OPPONENTS: None.

DISCUSSION ON HB 163: Senator Crippen asked what the difference is between "lessen to the slightest degree", which was striken from the bill, and "diminished". Senator Crippen asked if the House Judiciary had an exact definition of diminish in their minds. Representative Mercer answered that the House Judiciary felt it was a battle of words. Senator Crippen asked if a tired legislator is on his way home from the session, wouldn't that individual's ability to operate that vehicle diminished somewhat. Senator Crippen asked if that person is committing a crime. Represenative Mercer said no he was not, because the person was not weaving down the road, if the person was, then the policeman could give him a ticket.

Senator Mazurek asked how one can prove "diminished" when one doesn't have the test. Mr. Hull said the overall testimony against a person will show the diminished amount. Mr. Hull said that many people want to use the defense that yes they were drunk and yes they were weaving down the road, but the person didn't hit anything before being pulled over. He said that is used all the time as a defense.

Representative Mercer closed.

CONSIDERATION OF HB 546: Representative Harry Fritz of Missoula introduced HB 546 (see Exhibit 7).

PROPONENTS: George Schunk, Department of Justice, said he doesn't like what the House did to the bill and he handed out a summary of what the bill looked like before the House amended it and after, and what Harry Fritz would like to do with the bill (see Exhibit 8). He hoped the committee would return the bill to its original estate or table the bill.

Jacqueline N. Terrell, American Insurance Association, supported the bill, but presented an amendment also (see Exhibit 9).

Bonnie Tippy, Alliance for Independent Insurers, support the bill.

Randy Gray, State Farm Insurance, supported the bill also.

OPPONENTS: None

DISCUSSION ON HB 546: Senator Mazurek asked if the committee adopts the amendment that Mr. Schunk purposed, would it not make every misdemeanor a liability offense. Mr. Schunk replied that the fine would have to

less than $500 and no jail time. Senator Mazurek asked what offenses are we talking about here. Mr. Schunk said most of the offense in Title 61, which is the traffic code, have some jail time. He said the motor vechile code offense also include jail time.

Representative Harry Fritz closed on the bill.

The committee adjourned for executive action.

ACTION ON HB 53: Valencia gave the committee the amendment that would strike that repealer that leaves the maintainance of the Old Supreme Court Chambers unfunded (see Exhibit 10). Senator Crippen moved the amendment. The motion CARRIED. Valencia felt section 110 on page 166 should be looked at more carefully, so the committee held on action on the bill.

ACTION ON HB 19: Senator Mazurek said the bill will change the probate code for surving spouses with the homestead allowance act. He said it will make sure they get at least $20,000 off the top. Senator Bishop said that Mercer had some problems with that money coming right off the top of the estate. Senator Bishop explained that a Mr. Dave Johnson is the best in the business as far as the probate code and he said the committee should leave it alone. Senator Bishop moved the amendments presented by Valencia (the first three amendments and the last amendment in the Standing Committee Report). The amendments CARRIED. Senator Halligan moved on page 3, line 2 to strike $1,200 and insert $2,500. The motion CARRIED. Senator Yellowtail moved to strike on page 2, line 21 $4,500 and insert $6,000. The motion CARRIED. Senator Yellowtail still felt the bill doesn't do anything for the farmer. Senator Halligan moved the bill BE CONCURRED IN AS AMENDED. The motion CARRIED with Senators Pinsoneault and Yellowtail voting no (see Exhibit 11).

The committee adjourned at 12:00 p.m.

Chairman

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date March 9

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

DATE March 9th

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppo
Kathy Seeley	Dept of Justice	HB 163	✓	
Larry Majerus	Dept of Justice	HB 163 3rd	✓	
David N. Hull	City of Helena	HB 163	✓	
MARK J MURPHY	DOE J	HB 163	✓	
David LACKMAN	MT Public Health Assn	HB163	✓	
" "	" " " "	HB346	✓	
Rick Day	Dept. of Revenue	HB55	n/a	n/
David LACKMAN	MT Public Health Assn	HB509	✓	
MARC RACICOT	MT County ATTORNEYS	HB558	✓	
Brookes Morin	City of Helena	HB163	✓	
Kaylee Boston	Stop DUI Task Force	HB163	✓	
Jacqueline Terrell	Am. Insurance Assoc	HB546	✓	
JR Budd Gould	Dist 61	HB558	—	
Fred W. Hansbourg	Montana Personnel Division	HB509	✓	
Arthur L Wells	Federal Aviation Admin	HB509	✓	
George Schunk	Dept of Justice	HB546	✓	
JUDITH CARLSON	Co HEALTH	HB163	✓	
M.E. "Micky" Nelson	Stop DUI Task Force	HB163	—	
Bonnie Tippy	AII	HB546	✓	
Randy Gray	NAII; State Farm	HB546	✓	

(Please leave prepared statement with Secretary)

SENATE JUDICIARY
EXHIBIT NO. 1
DATE March 9, 19
BILL NO. HB 396

SUMMARY OF HB396 (PAVLOVICH)
(Prepared by Senate Judiciary Committee staff)

HB396 amends the statute relating to suspension of a driver's license. **The statute currently provides** that a license can be suspended if the licensee has permitted an unlawful or fraudulent use of such license as specified in 61-5-302 (attached). **The bill** provides that a license can be suspended if the licensee has committed or permitted an unlawful or fraudulent use of the license. Section 61-5-302 provides that making unlawful or faudulent use of a license is a misdemeanor but there is no provision for suspension of license for such use.

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61-5-301. Indication on driver's license of intent to make anatomical gift. (1) The department of justice shall provide on each operator's or chauffeur's license a space for indicating when the licensee has executed a document under 72-17-204 of intent to make a gift of all or part of his body under the Uniform Anatomical Gift Act.

(2) The department shall provide each applicant, at the time of application, printed information calling the applicant's attention to the provisions of this section, and each applicant must be given an opportunity to indicate in the space provided under subsection (1) his intent to make an anatomical gift.

(3) The department shall issue to every applicant who indicates such an intent a statement which, when signed by the licensee in the manner prescribed in 72-17-204, constitutes a document of anatomical gift. This statement must be printed on a sticker that the donor may attach permanently to the back of his driver's license.

(4) The department shall also furnish the licensee a means of revoking the document of gift upon the license.

History: En. 31-135.1 by Sec. 1, Ch. 28, L. 1977; R.C.M. 1947, 31-135.1; amd. Sec. 2, Ch. 459, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (2) and (3).

61-5-302. Unlawful use of license. It is a misdemeanor for any person to:

(1) display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious, or altered operator's or chauffeur's license;

(2) lend his operator's or chauffeur's license to any other person or knowingly permit its use by another;

(3) display or represent as one's own any operator's or chauffeur's license not issued to him;

(4) fail or refuse to surrender to the department upon its lawful demand any operator's or chauffeur's license which has been suspended, revoked, or canceled;

(5) use a false or fictitious name in any application for an operator's or chauffeur's license or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application; or

(6) permit any unlawful use of an operator's or chauffeur's license issued to him.

History: En. Sec. 37, Ch. 267, L. 1947; amd. Sec. 1, Ch. 70, L. 1961; R.C.M. 1947, 31-153; amd. Sec. 58, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: In (4) substituted reference to department of justice for reference to division of motor vehicles.

Cross-References

Kinds of fraud, 28-2-404.
What constitutes actual fraud, 28-2-405.
What constitutes constructive fraud, 28-2-406.
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.
Unsworn falsification to authorities, 45-7-203.
Misdemeanor — no penalty specified, 46-18-212.

61-5-303. Making false affidavit — penalty. Any person who makes any false affidavit or knowingly swears or affirms falsely to any matter or thing required by the terms of parts 1 through 3 of this chapter to be sworn

SENATE JUDICIARY
EXHIBIT NO. 11-4
DATE 1/12/87
BILL NO. HB 54

SENATE JUDICIARY
EXHIBIT NO. 2
DATE March 9 1987
BILL NO. HB 558

SUMMARY OF HB558 (GOULD)
(Prepared by Senate Judiciary Committee staff)

HB558 is by request of the Department of Justice and amends the statute relating to a person's responsibility for conduct while intoxicated. **Under current law,** a person who is intoxicated or drugged is criminally responsible for his conduct "unless such conduct is involuntarily produced and deprives him of his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law"and the condition can not be taken into consideration in determining the existence of a mental state.

The bill takes out any reference to "drugged" (presumably, "intoxicated" is intended to cover drugged situations as well as alcohol-related intoxication). **The bill,** as amended by the House, provides that a person who is intoxicated is criminally responsible for his conduct and that intoxication is not a defense and may not be taken into consideration in determining the existence of a mental state which is an element of the offense "unless the defendant proves that he did not know that it was an intoxicating substance when he consumed, smoked, sniffed, injected, or otherwise ingested the substance causing the condition".

COMMENTS: None.

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SENATE JUDICIARY
EXHIBIT NO. 3
DATE March 19, 1987
BILL NO. HB 558

HOUSE BILL NO. 558

INTRODUCED BY GOULD, MERCER, DARKO, CAMPBELL, MANNING, IVERSON, GILBERT, ELLISON, STANG, PETERSON, WALLIN, HAYNE, GIACOMETTO, JONES, C. SMITH, LORY, BULGER, QUILICI, FRITZ, DEMARS, ADDY, DAILY, GLASER, SWYSGOOD, BRANDEWIE, B. BROWN, HAGER, RASMUSSEN

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE TEST FOR RESPONSIBILITY FOR CRIMINAL CONDUCT ENGAGED IN WHILE INTOXICATED; AND AMENDING SECTION 45-2-203, MCA."

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

Section 1. Section 45-2-203, MCA, is amended to read:

"45-2-203. Responsibility -- intoxicated ~~or--drugged~~ condition. A person who is in an intoxicated ~~or-drugged~~ condition is criminally responsible for his conduct ~~unless such-condition-is-involuntarily-produced-and-deprives-him-of his-capacity-to-appreciate-the-criminality-of-his-conduct-or to-conform-his-conduct-to-the-requirements-of-law~~ if he knew ~~when--he--consumed,--smoked,-sniffed,-injected,-or-otherwise ingested-the-substance-causing-the-condition-that-it-was--an intoxicating--substance.~~ An AND AN intoxicated ~~or-drugged~~ condition is not a defense to any offense and may not be taken into consideration in determining the existence of a mental state which is an element of the offense, UNLESS THE DEFENDANT PROVES THAT HE DID NOT KNOW THAT IT WAS AN INTOXICATING SUBSTANCE WHEN HE CONSUMED, SMOKED, SNIFFED, INJECTED, OR OTHERWISE INGESTED THE SUBSTANCE CAUSING THE CONDITION."

-End-

HB 0558/02

was compelled by another person to ingest the substance causing his intoxication or that he

SENATE JUDICIARY
EXHIBIT NO. 4
DATE March 9 1987
BILL NO. HB 509

SUMMARY OF HB509 (SCHYE)
(Prepared by Senate Judiciary Committee staff)

HB509 is by request of the Aeronautics Division of the Department of Commerce. This bill prohibits the operation of an aircraft by a person under the influence of alcohol or drugs and provides blood alcohol standards of 0.04% by weight. The bill tries to incorporate by reference the motor vehicle provisions relating to consent to and administration of chemical blood, breath, or urine tests.

COMMENTS: This bill includes the same definition of "under the influence" as is in HB163; however, the definition in HB163 was amended by the House to read: "ability . . . has been diminished", the definition should probably be the same in both bills.

On page 4, line 11, the House put in a reference to Section 61-8-402, which is the section on consent to a chemical blood, breath, or urine test. This amendment does not really work and reference to 61-8-402 was not put in the bill when it was drafted because it does not work. I suggest deleting the reference and having no reference at all or attempting to draft an entire new section based on 61-8-402 (although I do not have any good ideas as to how, practically speaking, an officer of the law is expected to enforce this "flying under the influence" bill). (A copy of 61-8-402 is attached.)

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National Transportation Safety Board

Washington, D.C. 20594

Office of the Chairman

February 13, 1987

SENATE JUDICIARY
EXHIBIT NO. 14
DATE March 2, 1987
BILL NO. HB 529

Honorable Earl Lory
Chairman, Judiciary Committee
State House of Representatives
Capitol Building
Helena, Montana 59620

Dear Chairman Lory:

The threat of alcohol and drug abuse to aviation safety is a matter of deep concern to the National Transportation Safety Board. As the federal agency designated by Congress to investigate aviation accidents, we have seen the tragic consequences of alcohol and drug use by pilots in many accidents.

Safety Board records show that in 1984 there were 38 aviation accidents involving alcohol use by the pilot-in-command in which 40 occupants died and 35 were injured. Preliminary analysis of 1985 accidents indicates 35 alcohol-involved accidents which killed 41 occupants and injured 22. Our examination of aviation accidents from 1975 to 1984 indicates nearly 10 percent of fatally-injured pilots tested were found to have alcohol in their bodies at the time of crash. But more than the mere presence of alcohol was found. After a thorough investigation by the Safety Board of these accidents, the Board officially judged the pilot's use of alcohol to be a cause or factor in those accidents.

Let me also point out that these figures are, most certainly, underestimates of the true level of alcohol involvement in aviation accidents. Approximately 20 percent of fatally-injured pilots do not receive any toxicology tests. But for surviving pilots the data are much more incomplete -- only one-half of one percent of surviving pilots in crashes are tested for the presence of alcohol. The data on drug involvement is even worse. Until recently, the Federal Aviation Administration (FAA) almost never tested even fatally-injured pilots for drugs other than alcohol.

Almost all of the alcohol-related aviation accidents we have investigated involve general aviation rather than commercial flying. But even though most of these accidents do not involve alcohol-impaired pilots carrying dozens of passengers, their threat to other aircraft and to all those on the ground is very real indeed. One accident we investigated in Georgia recently involved a pilot who had been drinking. He took off carrying his 5-year-old daughter and decided to "buzz" her grandparents' house so she could wave to them. Fortunately, he missed their house -- but crashed a short distance beyond. We found later that he had forgotten to fuel his aircraft. His reckless actions cost him his own life and his young daughter's.

The public assumes that the FAA has the rules and the means to protect them from alcohol- and drug-impaired pilots. Federal Aviation Regulations (14 CFR 91.11) do prohibit the operation or the attempt to operate an aircraft while under the influence of alcohol or drugs. Consumption of alcoholic beverages within 8 hours before flight is prohibited. Flying with a blood alcohol concentration of 0.04 percent or more is illegal. But -- and it is a big "but" in our view -- the enforcement of these regulations depends on every State having the legal authority to arrest and test a pilot suspected of "flying while intoxicated" in order to trigger the FAA's review and enforcement process. The problem is that not all States have "flying while intoxicated" statutes. Ten, including Montana, do not. While it is the Safety Board's position that no measurable alcohol in the blood should be allowed, only eight States set a blood alcohol limit at all (two at the FAA's 0.04 percent, two at 0.05 percent, and four at 0.10 percent). As few as four States have specific "implied consent" authority to demand an alcohol test from pilots as virtually all States do with suspected drunk drivers.

The measure before the Judiciary Committee today addresses the shortcomings in the Federal/State enforcement system I have described above. By enacting this statute, Montana will make it clear that alcohol- and drug-impaired pilots have no place in your State -- and you will have the law and the means to prove it.

Respectfully yours,

Jim Burnett
Chairman

cc: Mr. Michael Ferguson, Administrator
Aeronautics Division
Montana Department of Commerce

SENATE JUDICIARY
EXHIBIT NO. 4A
DATE 3-9-87
BILL NO. H.B. 509

Definition of "ways of this state open to the public", 61-8-101.
Operation of a motor vehicle by a person with blood alcohol concentration of 0.10 or more, 61-8-406.
Multiple convictions prohibited, 61-8-408.
Penalty for driving while intoxicated, 61-8-714.
Penalty for driving with excessive blood alcohol concentration, 61-8-722.
Habitual traffic offenders, Title 61, ch. 11, part 2.

61-8-402. Chemical blood, breath, or urine tests. (1) Any person who operates a vehicle upon ways of this state open to the public shall be deemed to have given consent, subject to the provisions of 61-8-401, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a vehicle while under the influence of alcohol. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol. The arresting officer may designate which one of the aforesaid tests shall be administered.

(2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

(3) If a resident driver under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in subsection (1) of this section, none shall be given, but the officer shall, on behalf of the department, immediately seize his driver's license. The peace officer shall forward the license to the department, along with a sworn report that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol and that the person had refused to submit to the test upon the request of the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (5).

(4) Upon seizure of a resident driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is valid for 72 hours after the time of issuance.

(5) The following suspension and revocation periods are applicable upon refusal to submit to a chemical test:

(a) upon a first refusal, a suspension of 90 days with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

(6) Like refusal by a nonresident shall be subject to suspension by the department in like manner, and the same temporary driving permit shall be issued to nonresidents.

(7) All such suspensions are subject to review as hereinafter provided.

History: En. Sec. 1, Ch. 131, L. 1971; R.C.M. 1947, 32-2142.1; amd. Sec. 1, Ch. 103, L. 1981; amd. Sec. 1, Ch. 602, L. 1983; amd. Sec. 3, Ch. 659, L. 1983; amd. Sec. 8, Ch. 698, L. 1983; amd. Sec. 3, Ch. 99, L. 1985; amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 99 in (1) and (3) substituted "vehicle" for "motor vehicle" in four places.

Chapter 503 in (3) in three places, in (4), (5)(b), and (6) substituted references to department of justice for references to division of motor vehicles.

SENATE JUDICIARY
EXHIBIT NO. 5
DATE March 6, 1987
BILL NO. HB 163

SUMMARY OF HB163 (MERCER)
(Prepared by Senate Judiciary Committee Staff)

HB163 changes the laws regarding driving under the influence of alcohol or other drugs. It amends the three sections dealing with driving under the influence, mandatory revocation of license, and suspension or revocation of license. **Under current law,** it is illegal to drive or be in actual physical control of a vehicle while "under the influence" (undefined) of 1) alcohol (without qualification), 2) a narcotic drug (without qualification), or 3) any other drug to a degree which renders him incapable of safely driving a vehicle. **This bill** amends the third category by eliminating the qualification of "to a degree which renders him incapable of safely driving a vehicle" and then establishes a definition of "under the influence" which qualifies all three categories.

"Under the influence" is defined as meaning "that as a result of taking into the body alcohol, drugs, or any combination thereof, a person's ability to safely operate a motor vehicle has been diminished. (The definition was originally drafted as "ability . . . has been lessened to the slightest degree" this was amended to "diminished" by the House.)

COMMENTS: None.

C:\LANE\WP\SUMHB163.

STATE REPORTER
Box 749
Helena, Montana 59624

VOLUME 43

No. 86-55

THE CITY OF HELENA,

Plaintiff and Respondent,

v.

KEITH OWEN DAVIS,

Defendant and Appellant.

Submitted: Jun. 24, 1986
Decided: Aug. 8, 1986

AUTOMOBILES, Appeal from conviction for driving under the influence of alcohol or drugs on the grounds that the jury was improperly instructed. The Supreme Court held that the "Cline" instruction is no longer a proper statement of the law in Montana and the instruction must be either revised or abandoned to conform with the provisions of Section 61-8-401, MCA.

Appeal from the First Judicial District Court, Lewis & Clark County, Hon. Henry Loble, Judge

For Appellant: Leo J. Gallagher, Helena

For Respondent: Hull & Sherlock; David Hull, Helena

Submitted on briefs.

Opinion by Justice Harrison; Chief Justice Turnage and Justices Sheehy, Weber, Morrison, Hunt and Gulbrandson concur.

Reversed and remanded.

___ Mont. ___

723 P.2d 224

SENATE JUDICIARY
EXHIBIT NO. 6
DATE 2-9-87
BILL NO. H.B. 16

The City of Helena, Plaintiff and Respondent, v. Davis, Defendant and Appellant.
43 St.Rep. 1447

Mr. Justice Harrison delivered the Opinion of the Court.

This is an appeal by the defendant from his conviction for the offense of driving under the influence of alcohol or drugs in violation of § 61-8-401, MCA. The only contention raised by the defendant on appeal is whether the trial court properly instructed the jury with regard to the above charged offense. We reverse and remand this case for a new trial consistent with this opinion.

On April 14, 1985, the defendant-appellant, Keith Owen Davis (hereinafter "Davis"), was arrested for driving under the influence of alcohol or drugs in violation of § 61-8-401, MCA. The defendant was convicted of the charged offense in Helena City Court and he appealed his conviction to the District Court. In a trial de novo before the District Court of the First Judicial District a jury of six persons convicted the defendant of the same charged offense.

Section 61-8-401, MCA, reads in pertinent part as follows:

"Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714 for any person who is under the influence of:

"(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

"(b) a narcotic drug to drive or be in actual physical control of a vehicle within this state;

"(c) any other drug to a degree which renders him incapable of safely driving a vehicle to drive or be in actual physical control of a vehicle within this state; or

"(d) alcohol and any drug to a degree that renders him incapable of safely driving a vehicle to drive or be in actual physical control of a vehicle within this state.

"(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

"(3) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

"(a) If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

"(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not give rise to any presumption that the person was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the person.

"(c) If there was at that time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol. Such presumption is rebuttable.

"(4) The provisions of subsection (3) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol. (Emphasis added.)

". . ."

The jury was instructed, over defense counsel's objection, that the law as it relates to § 61-8-401 was as follows:

"You are instructed that the expression 'under the influence of alcohol' covers not only all the well-known and easily recognized conditions and degrees of intoxication but any abnormal mental or physical condition which is the result of indulging in alcohol to any degree, and which tends to deprive a person of that clearness of intellect and control of himself which he would otherwise possess. If the ability of the driver of an automobile has been lessened in the slightest degree by the use of alcohol, then the driver is deemed to be under the influence of alcohol. The mere fact that a driver has taken a drink does not place him under the ban of the statute unless such drink has some influence upon him, lessening in some degree his ability to handle said automobile." (Emphasis added.)

Davis now presents the following issue for review by this Court: Whether the District Court erred by giving a jury instruction that was at variance with the statute defining the offense for which he was charged and convicted.

In his brief, Davis argues because he was charged with driving under the influence of both alcohol and drugs pursuant to (1) (d) of § 61-8-401, the law clearly states he is not guilty unless his driving ability was impaired "to a degree that [rendered] him incapable of safely driving a [motor] vehicle." But rather than instructing the jury as to the criteria set forth in the statute, Davis argues, the trial court instructed the jury to convict him if his ability to drive was "lessened in the slightest degree."

Davis concedes the jury instruction given by the trial court was approved by this Court nearly 27 years ago in State v. Cline (1959), 135 Mont. 372, 339 P.2d 657. However, Davis argues, the instruction approved in Cline related only to a situation where the defendant was charged and convicted of driving under the influence of intoxicating liquor. In approving the instruction in Cline, Davis points out, this Court interpreted Montana's 1955 version of its DUI law and noted "the

Legislature . . . placed no limitations on the extent of the influence of intoxicating liquor required to come under the statute . . . [and] the instruction, taken as a whole, correctly states the law in Montana as applicable to a case of this kind." Cline, 339 P.2d at 662. Montana's 1955 DUI law (Art. IV, Section 39, Chapter 263 of the Session Laws for 1955) provided as follows:

"Persons under the influence of intoxicating liquor or of drugs.

"(a) It is unlawful . . . for any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle to drive a vehicle within this state. The fact that any person charged with a violation of this paragraph is or has been entitled to use such drug under the laws of this State shall not constitutute a defense against any charge of violating this paragraph." (Emphasis added.)

". . ."

Unlike the defendant in Cline, Davis argues, he was charged with driving under the influence of both alcohol and drugs. Further, unlike the offense charged in Cline, Davis asserts, the statute he was charged and convicted of violating does contain a clear legislative directive as to the extent of influence of the intoxicants. The offense charged in this case does not say the law is broken if one drives while impaired to the "slightest degree;" rather, the law states an offense is committed if one's driving ability is impaired "to a degree that renders him incapable of safely driving a [motor] vehicle." Davis argues the trial court committed reversible error by instructing the jury to convict him on the basis of a factual criteria that is at variance with the criteria used by the legislature in defining the elements of the crime. Had the jury in this case been fully and fairly instructed on the law as passed by the legislature, Davis argues, he may not have been convicted.

Although we do not totally agree with the argument presented by Davis, we do feel he has brought to light one very important point -- the "Cline" instruction no longer reflects the law in Montana as passed by our legislature.

First, it must be noted that Davis was not charged with driving under the influence of both alcohol and drugs pursuant to (1) (d) of § 61-8-401 as he suggests. Rather, Davis was charged with a violation of § 61-8-401 generally. In other words, Davis was charged with driving while under the influence of alcohol and/or drugs.

Next, we feel it is important to review the argument presented by the City of Helena. The City of Helena, of course, strongly argues that the jury instruction given and approved in Cline, supra, was also appropriately given in the instant case. As noted above, this Court in Cline interpreted Montana's 1955 DUI law and determined that the offered instruction correctly stated the law in Montana as applicable to a case of that kind. In both Cline and the instant case the

defendants were charged with driving under the influence of alcohol (intoxicating liquor). It is also important to note, the City of Helena argues, that both Montana's 1955 DUI law and today's DUI law are essentially the same (see above). A comparison of the former law with today's law reveals that despite its many amendments the legislature has left intact the original criteria regarding the degree of impairment the state must prove in order to convict an individual of driving under the influence of alcohol or drugs. Therefore, since the instruction given and approved in Cline was based upon the same laws and situation as found in the instant case, the City of Helena argues, it was proper that the "Cline" instruction was given in this case. We disagree.

Simply put, we hold the "Cline" instruction no longer states the law in Montana. We find since this Court approved the "Cline" instruction in 1959, the legislature has significantly revised this State's DUI law. Although a comparison of Montana's original DUI law and today's DUI law reveals that the legislature has left intact much of the statute's original language, the legislature has also made some critical additions to the statute since it was first enacted. The most important addition to the DUI law has been subsection (3) of § 61-8-401 which sets forth the various presumptions that may be read to a jury when a person is charged with driving under the influence of alcohol (see above). Obviously, this section of the DUI law was not available to this Court when we approved the "Cline" instruction. In fact, in Cline, we held that because the legislature had placed no limitation on the extent of the influence of alcohol required to come under the DUI statute, we could justifiably adopt the offered instruction. As this Court stated in Cline:

"This identical instruction was given in an Arizona case, Steffani v. State, 45 Ariz. 210, 42 P.2d 615, 618. The court there made the observation that the Legislature of the State placed no limitation on the extent of the influence of intoxicating liquor required to come under the statute, and held that they could not add to the language of the statute. We believe that the instruction, taken as a whole, correctly states law in Montana as applicable to a case of this kind."

Cline, 339 P.2d at 662. Clearly, this is not the situation under Montana's current DUI law.

In conclusion, we hold the "Cline" instruction is no longer a proper statement of the law in this State and the instruction must either be revised or abandoned to conform with the provisions of § 61-8-401. As noted above, we find the legislature today had specifically spelled out in § 61-8-401 the extent of the influence of intoxicants necessary to be convicted of driving under the influence of alcohol or drugs. As applied to the instant case, Davis is entitled to a new trial with the jury being instructed as to proper criteria set out in § 61-8-401 which is applicable to a charge of driving under the influence of alcohol and/or drugs.

The conviction of the defendant is reversed and this matter is remanded for a new trial consistent with this opinion.

SENATE JUDICIARY
EXHIBIT NO. 7
DATE March 4, 1987
BILL NO. HB 546

SUMMARY OF HB546 (FRITZ)
(Prepared by Senate Judiciary Committee staff)

HB546 amends the statutes relating to imposition of absolute liability (that is, criminal liability even though the defendant has not met all requisite elements of mental state) and driving under the influence. **This bill** imposes absolute liability for persons convicted of driving while under the influence of alcohol or drugs.

Under current law, absolute liability can be imposed only if the offense is punishable by a fine not exceeding $500 and the statute defining the offense clearly states that absolute liability will be imposed. **As originally drafted, the bill** amended the statute on absolute liability [section 1 of the bill] by changing "and" to "or"; so that absolute liability could be imposed in any cases where the defining statute provided for absolute liability. The bill then amended the DUI statutes to provide for absolute liability.

As amemded by the House, absolute liability can only be imposed in cases where a fine can be imposed of less than $500 except in cases of DUI and , in all cases, if the defining statute so provides. That is, absolute liability can be imposed in cases of over $500 only if the case is a DUI. In other words, the bill as amended by the House accomplishes what was originally intended by the bill and limits the provisions of the bill only to DUI offenses. As originally drafted, absolute liability could possibly be extended to any other crime in the future by a simple amendment to a defining statute making absolute liability apply to that crime.

C:\LANE\WP\SUMHB546.

SENATE JUDICIARY
EXHIBIT NO. 8
DATE March 9, 1987
BILL NO. HB 546

HB 546, DUI ABSOLUTE LIABILITY

I. Section 45-2-104, as presently enacted means:

Unless an offense has (1) no possibility of jail time and (2) an express purpose to be an absolute liability offense, it cannot be so considered and must contain a mental state element (e.g. jury instruction on knowingly provided defendants).

II. HB 546, as introduced provided:

45-2-104. Absolute liability. A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in subsections (33), (37), and (58) of 45-2-101 only if the offense is punishable by a fine not exceeding $500 ~~and~~ or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

III. HB 546, as amended by the House Judiciary Committee and passed by the House provides:

"45-2-104. Absolute liability. A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in subsections (33), (37), and (58) of 45-2-101 only if the offense is punishable by a fine not exceeding $500, EXCEPT FOR AN OFFENSE UNDER 61-8-401 OR 61-8-406, ~~and~~ ~~or~~ AND the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described."

SENATE JUDICIARY
EXHIBIT NO. 8
DATE 3-9-87
BILL NO. H.B. 546

March 9, 1987

BILL AMENDMENT

To amend blue copy of House Bill No. 546 introduced by Representative Fritz.

1. Page 1, lines 16 and 17.
Following: "$500" on line 16
Strike: the remainder of line 16 through "AND" on line 17
Insert: "or"

SENATE JUDICIARY
EXHIBIT NO. 9
DATE March 9, 1987
BILL NO. HB 546

STATEMENT OF
AMERICAN INSURANCE ASSOCIATION
BY
JACQUELINE N. TERRELL
RE HB546

The American Insurance Association supports the intent and effect of this bill. The specific language of the amendments to 61-8-401 and 61-8-406, MCA, however, cause concern relative to future interpretation and spillover to civil liability. We therefore request that:

Page 3, line 20, and
Page 4, line 4

both be amended to read:

after "liability" insert "as provided in 45-2-104"

so that the resulting sections would state in part

Absolute liability AS PROVIDED IN 45-2-104 will be imposed for a violation of this section.

So amended, we recommend a do pass on the bill.

SENATE JUDICIARY
EXHIBIT NO. 10
DATE March 9, 1987
BILL NO. HB 53

HB 53 is amended:

1. Title, line 7.
Strike: " 2-17-109, "

2. Page 239, line 13.
Strike: " 2-17-109, "

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February 18, 1987

Senator Richard Pinsoneult
Senate District 27
Helena, MT 59620

Dear Senator Pinsoneult,

I would like to bring to your attention House Bill 366, a bill that proposes to increase the amount of homestead exemption from $40,000 to $80,000. This exemption was increased in 1981 from $20,000 to $40,000 to compensate for the cost of living increase; an action that perhaps was justifiable at that time due to real estate value increases of the 1970's. Currently, however, the value of homes in Montana is deteriorating. $40,000 is already more equity than most people have in their homes. A judgment already means very little to creditors. An increase in exemption would serve no purpose other than further protecting debtors in bankruptcy and upon execution, regardless of creditors' rights for compensation.

If approved, this law would render almost 100 percent of collection judgments uncollectible even upon the sale of a valuable house with much equity. Debtors would be free to leave the state with $80,000 from the sale of their home without paying judgment creditors.

I would also like to comment on House Bill 19. Although it increases the auto exemption from $1,000 to $3,500, it also includes a new $3,000 value limitation on implements and tools of trade. I submit that this $3,000 limitation is essential. Previously, there has been no limitation on this category and, as a result, debtors were allowed to claim large assets, such as semi-trucks, as exempt in bankruptcy and upon execution. Oftentimes, debtors' attorneys purposely structure their clients' assets to take advantage of such unlimited exemptions. Such "conversion" of assets is generally not considered a violation of federal bankruptcy laws.

I submit that the pendulum has swayed far enough to protect debtors at the expense of creditors. Currently, people with outstanding judgments or those just coming out of bankruptcy often have substantially better cash flow and net worth than people who choose to pay their bills. The more money lost due to non-payers, the more has to be paid by the payers to keep the services, such as hospitals, alive. Somebody has to pay. More liberal exemptions simply encourage more non-payment and more bankruptcies, which are already at an all time high.

Sincerely,

H. John Balyeat

NAME: George Schunk DATE: 3/9/07

ADDRESS: Dept of Justice

PHONE: 2026

REPRESENTING WHOM? AG

APPEARING ON WHICH PROPOSAL: HB 546

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

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WITNESS STATEMENT

NAME DAVID LACKMAN BILL NO. HB ~~XXX~~ 509

ADDRESS 1400 Winne Avenue, Helena, MT 59601 (443-3494) DATE 3/9/87

WHOM DO YOU REPRESENT? Montana Public Health Assn. / American Public Health Assn.

SUPPORT XXXXX OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY. HB 509 (Schye) Prohibit the operation of an aircraft while under the influence of alcohol/ drugs.

Comments:

Soon after we got alcohol testing underway, one of my secretarys transferred to the airport. She called one day and said we have a problem down here with FUI. They needed some of the breath-testing samplers; so I ~~gave her~~ took some down. In a few days she called back and said they had no legal authority to use them; and would I [redacted] get them. Hence the necessity for this legislation.

In the Bitterroot Valley we had an example of the situation. There was a bar-resort in the Moose Creek area west of the BR range. The usual means of getting to it was by small planes. On occasion the planes would be socked in by the weather. However, a few swift drinks provided courage to try to fly out in spite of the odds. There are [redacted] planes that haven't yet been found by hunters.

This is not an isolated situation. Some of the mid-airs have been due to FUI. It is difficult enough to pilot a plane through the mountains ; especially in inclement weather, not to be in full command of you faculties.

We urge serious consideration of this bill; and its enactment.

THANK YOU

DBL

CS-34

NAME: Fred W. HASSKAMP DATE: 3-9-87

ADDRESS: Box 5178 Helena, MT 59604

PHONE: 444-2506

REPRESENTING WHOM? Montana Aeronautics Division

APPEARING ON WHICH PROPOSAL: HB. 509

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

COMMENTS: Montana is one of ten states that does NOT have a "flying while intoxicated" statute. The FAA is unable to enforce Federal Air Regulation 91.11, Alcohol and Drugs in Montana because State Law Enforcement cannot make an arrest without a State Statute

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: ARTHUR L WELLS DATE: 3/9/87

ADDRESS: 12 Hidden Valley Dr Forest Park, Clancy MT

PHONE: 933 8296

REPRESENTING WHOM? Federal Aviation Administration

APPEARING ON WHICH PROPOSAL: HB 509

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

COMMENTS: This bill will enable a MT. law officer to stop, test and take action against a pilot of an aircraft suspected of operating an aircraft while intoxicated. It will work hand in glove with FAA's ~~instant~~ recent regulation change on the same subject. FAA can and will take action against any airman either refusing to take a test for alcohol or having a test result greater than .04%.

Without this bill neither FAA nor the State can effectively take action on a pilot who is flying while intoxicated.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WITNESS STATEMENT

NAME DAVID LACKMAN BILL NO. HB 163

ADDRESS 1400 Winne Avenue, Helena, MT 59601 (443-3494) DATE 3/9/87

WHOM DO YOU REPRESENT? Montana Public Health Assn./American Public Health Assn.

SUPPORT XXXX OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY. Providing Definition of "UNDER THE INFLUENCE"; Replacing existing standard Senate judiciary Monday Rm 325 10 A.M.

Comments:

Our laboratory got "implied consent" on the road by providing testing for blood alcohol concentration. The national standard of 0.1 % was adopted. However, there was no recognition of individual variations in susceptibility to the effects of alcohol; or to its metabolism. During one of our training sessions for the highway patrol, free alcoholic beverages were supplied to the officers. Then they were tested on the machines. Only one reached a level above 0.1%. However, there was unanimous agreement that even at levels from 0.05-0.1 %, they did not feel capable of operating a motor vehicle safely. Some jurisdictions have set the level at 0.05 %.

Now there are reliable tests which an officer can administer on the spot to determine whether a person is fit to operate a vehicle. Foremost among these is an eye test.

That this bill is needed as a statute is well illustrated in the 1985 Annual Report of the Montana Highway Patrol. That report is the worst horror story in Montana. The percentage of accidents on our highways in which alcohol is involved is much too high. Enactment of this bill is an urgent need.

THANK YOU

DBL

CS-34

STANDING COMMITTEE REPORT

March 9 19 87

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 19

Third reading copy (blue color)

General revision of laws relating to property exempt from execution.
Mercer (Thayer)

Respectfully report as follows: That HOUSE BILL No. 19

1. Title, line 7.
Strike: "70-32-103,"

2. Title, line 8.
Strike: "70-32-106,"
Following: "70-32-213,"
Insert: "AND"

3. Title, lines 8 through 10.
Following: "70-32-214," on line 8
Strike: the remainder of line 8 through "72-3-1104," on line 10

4. Page 2, line 21.
Following: "$6,000"
Strike: "$4,500"
Insert: "$6,000"

5. Page 3, line 2.
Following: "$3,500"
Strike: "$1,200"
Insert: "$2,500"

6. Page 8, line 16 through page 23, line 16.
Strike: sections 11 through 25 in their entirety
Renumber: subsequent sections

~~DO PASS~~ AND AS AMENDED

~~DO NOT PASS~~ BE CONCURRED IN

Senator Mazurek Chairman.