

## **MINUTES**

### **MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By Chairman Dick Pinsoneault, on February 19, 1991,  
at 10:10 a.m.

#### **ROLL CALL**

**Members Present:**

Dick Pinsoneault, Chairman (D)  
Bill Yellowtail, Vice Chairman (D)  
Robert Brown (R)  
Bruce Crippen (R)  
Steve Doherty (D)  
Lorents Grosfield (R)  
Mike Halligan (D)  
John Harp (R)  
Joseph Mazurek (D)  
David Rye (R)  
Paul Svrcek (D)  
Thomas Towe (D)

**Members Excused:** none

**Staff Present:** Valencia Lane (Legislative Council).

**Please Note:** These are summary minutes. Testimony and discussion  
are paraphrased and condensed.

**Announcements/Discussion:**

#### **HEARING ON SENATE BILL 331**

**Presentation and Opening Statement by Sponsor:**

Senator Eve Franklin, District 17, advised the Committee that SB 331 was requested by the Montana Coroner's Association, and would generally revise provisions related to the duties of county coroners and jurors in coroner's inquests.

**Proponents' Testimony:**

Steve Knecht, Judith Basin County Coroner and Sheriff, and President of the Montana Coroner's Association, said the Association has been trying to get clarification of coroner duties for the past ten years. He commented that past problems with law enforcement authorities have been worked out, and said that in his ten years as a county coroner he did not feel good about the laws

and scope of operation relating to coroners. Mr. Knecht provided copies of amendments from the Coroners Association and from Senator Franklin, (Exhibits #1 and #2).

Paul Johnson, Assistant Attorney General, Department of Justice provided FAXed testimony from Gary Dale, Medical Examiner, Missoula, in support of SB 331 (Exhibit #3).

#### Opponents' Testimony:

Mike McGrath, Lewis and Clark County Attorney, said he objects to section 15 on who calls inquests. He explained that the county attorneys call them now, and that the Coroners do not object to returning the language to its original state. Mr. McGrath stated he would support the bill with this change.

#### Questions From Committee Members:

Senator Halligan asked Mr. McGrath if, with the amendment, section 1 would be okay. Mike McGrath replied there is still a problem with who will run the show when the Sheriff and the Coroner are two different people. He commented that it is his understanding that this is being worked out.

Senator Towe asked if coroners have the authority to search buildings now. Steve Knecht replied they do, and said the significant change deals with seizing evidence. He commented that if entry is refused, a coroner can get a search warrant.

Chairman Pinsoneault asked how many counties have a Sheriff who is not the Coroner. Steve Knecht replied it is split about 50-50, as the Coroner is a part-time job.

#### Closing by Sponsor:

Senator Franklin said she was certain the Committee would make a right and fair judgment on SB 331.

### HEARING ON SENATE BILL 308

#### Presentation and Opening Statement by Sponsor:

Senator Dorothy Eck, said the bill would eliminate advanced age as a condition leading to guardianship or conservatorship.

#### Proponents' Testimony:

John Melcher, Jr., Department of Family Services (DFS), said the Department has received a lot of material from groups on aging requesting this legislation (Exhibit #4).

Hank Hudson, Governor's Coordinator on Aging, said there is no scientific basis for stating that any condition is related to the

aging process except possibly the need for eyeglasses. He stated that to link age with incapacity is a form of prejudice, and that the Governor's office has the responsibility of offering a positive image of senior citizens in Montana. He added that citizens of Montana must be valued regardless of age.

Opponents' Testimony:

There were no opponents of SB 308.

Questions From Committee Members:

There were no questions.

Closing by Sponsor:

Senator Eck commented that SB 308 represents a minor change in the law, and said she is continually surprised to find sections in the law discriminating against age.

EXECUTIVE ACTION ON SENATE BILL 308

Motion:

Senator Halligan made a motion that SB 308 DO PASS.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

The motion made by Senator Halligan carried unanimously.

HEARING ON SENATE BILL 364

Presentation and Opening Statement by Sponsor:

Senator Eleanor Vaughn, District 1, said the bill allows video taping for prosecuting of any crime if the victim is under 16 years of age. She explained that the bill was drafted as a result of a situation in her district where it was very traumatic for four- and five-year-old children to testify in the presence of a man who had abused them.

Proponents' Testimony:

John Connor, Montana County Attorneys, told the Committee 46-15-401, MCA, was originally enacted in 1977 but only with respect to rape. He said it was amended in 1979 to include felony sexual assault, and again later on to include violent crimes and deviant sexual conduct.

John Connor reported that the procedural aspects are defined in 46-15-402, MCA, and require that video taping include the presence of the district judge, the victim, and the prosecuting attorney. He said it essentially includes everyone but the jury and the packed courtroom.

Mr. Connor said he did not believe the legislation would present a problem to defendants and defendant counsel. He commented that "in person" testimony is more powerful for the most part, but in certain incidents where the victim is already traumatized, it is best for the child to be able to use video testimony.

#### Opponents' Testimony:

There were no opponents of the bill.

#### Questions From Committee Members:

Senator Towe asked John Connor if it were intended that the bill apply to incidents where the child is a witness to a crime, but may not be a victim. John Connor replied that if a child who witnesses a violent crime is not a witness, he does not know who is. He said that since "victim" is not described in the statutes, it should be up to the court to determine.

Senator Towe asked if the definition of a victim needed to be clarified. John Connor replied that the court, in its discretion, can determine if videotaping is appropriate, and that might be better than trying to determine it by statute only.

Senator Towe commented that Title 45, Chapter 5 would include unlawful possession of intoxicating substances by a teenage in the bill. John Connor replied that there are several crimes in that title and chapter which would not apply, but again should be up to the discretion of the court.

Senator Towe asked if it should be outlined in statute as to which crimes apply. John Connor replied that again should be left to the discretion of the court.

Chairman Pinsoneault said his sense was that county attorneys might determine that a personal appearance is better than videotaping in some instances. John Connor agreed.

Senator Rye advised Senator Towe that the child he referred to earlier was indeed a victim, as the perpetrator was charged with five counts of kidnapping and four counts of homicide.

Senator Halligan asked if there were a bill in to allow closed circuit t.v., as allowed by the Supreme Court in one instance. John Connor replied he was not aware of such a bill, and said he believed Senator Halligan was referring to the Maryland v. Craig case.

Closing by Sponsor:

Senator Vaughn said she was sure that if videotaping were left to the discretion of the courts, they would do their best in each instance.

EXECUTIVE ACTION ON SENATE BILL 364

Motion:

Senator Halligan made a motion that SB 364 DO PASS.

Discussion:

Senator Towe said he was bothered by the fact that there is no language in the bill addressing the approval or discretion of the court. John Connor replied he had no problem with amending the bill, but believes the court has the inherent ability anyway.

Senator Halligan commented that the courts are well-educated and are sensitive to issues.

Senator Towe asked what would happen is a defendant did not agree. John Connor replied he would never suggest to a judge that he didn't have discretion.

Amendments, Discussion, and Votes:

Senator Towe made a motion to strike "and" and insert ",," on line 13, following "45-5-507", and insert " and with the approval of the court" following "transaction" on line 14.

The motion failed 4-6 in a roll call vote (attached).

Recommendation and Vote:

Senator Halligan's motion that SB 364 DO PASS carried unanimously.

HEARING ON SENATE BILL 321Presentation and Opening Statement by Sponsor:

Senator Harry Fritz, District 28, said SB 321 would render innocent victims of DUI accidents eligible for crime victims compensation. He explained that the bill sets up a crime victims compensation fund, and makes funds interchangeable, and provides a funding source (see fiscal note).

Senator Fritz said Montana is one of the few states not compensating DUI victims, and that he is not satisfied with the funding source. He explained that HB 548 provides an alternative source of funding, and said the funding proposed is too high. Senator Fritz commented that the fee should be reduced to \$30 or \$35, or not more than \$50.

Proponents' Testimony:

Ed Hall, Administrator, Board of Crime Control, advised the Committee that 15 claims per year were estimated for the fiscal note, and said that might be a little conservative. He said costs were estimated at \$4,000 per claim, based on a survey of all states participating in DUI compensation.

Mr. Hall told the Committee that three states do not participate right now, and said the proposed \$150 surcharge on DUIs would generate far more money than is needed. He repeated Senator Fritz' statement that \$30 or \$35 would probably be adequate.

Mr. Hall explained that passage of this legislation would make Montana eligible for 40 percent reimbursement of dollars expended. He said Montana also needs to be able to reimburse Montana victims who are injured in other states.

Mr. Hall provided a letter he received from Diane Morin, Victims Advocate, Missoula (Exhibit #5). He said he also received a call from a Phillipsburg man in support of the bill, whose 20-year-old daughter was killed by a drunk driver.

Cheryl Bryant, Crime Victims Unit, DOJ, said the bill would compensate victims of drunk drivers in Montana, as well as Montana drivers injured in other states, and would eliminate the family exclusion. She said crime victims are currently compensated through funding from a portion of justice court fines.

Ms. Bryant stated that Nevada has legislation pending to cover Nevada residents injured outside that state, and Maine and South Dakota have legislation pending to enact a DUI victims compensation fund. She explained that benefits can be denied on a certain basis, and that although Indian reservations have no specific outreach, claims are paid for incidents on reservations.

Pat Bradley, Montana Magistrates Association, stated her support of the bill and read from prepared testimony (Exhibit #6). She said HB 548 which was heard in February in the House Human Services Committee would add \$130,000 to the crime victims fund, and reviewed proposed amendments to the bill. Ms. Bradley advised that the courts' jurisdiction lasts only 60 days, but collection is often difficult. She suggested using provisions in 3-10-601, MCA.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Chairman Pinsoneault asked about the cost of claims. Ed Hall replied the Unit is spending about \$400,000 annually of which approximately 40 percent would be federally reimbursed.

Senator Doherty asked how many accidents in 1990 involved automobile insurance. Cheryl Bryant that 15,000 tickets were issued to uninsured drivers, but she had no way to compare those statistics with DUI incidents. She stated that where there is insurance, claims would be handled like all cases.

Senator Doherty asked if automobile insurance companies would reduce their payments in view of crime victim payments. Cheryl Bryant replied that crime victim language states that no insurance can be secondary to a crime victim payment.

Senator Towe asked Patricia Bradley to repeat the breakdown of first offense DUI costs. Mr. Bradley replied there is a \$300 fine; a \$10 surcharge; a \$175 fee for ACT program; a \$33 cost of one day in jail; and a \$50 fee to reinstate a drivers license. She said the addition of the \$150 assessment required by SB 321 would total \$768.

Senator Towe asked Cheryl Bryant to comment on the proposed \$150 fine. Ms. Bryant replied that \$71,223 is the estimated cost for claims, and that \$1800 is needed to meet administrative costs.

Senator Towe asked which parts of the bill must pass to get federal dollars. Cheryl Bryant repeated her earlier statement that DUI victims must be compensated, provisions must be made for Montana residents injured in other states to be compensated, and families must be included.

Chairman Pinsoneault asked if any attorney fees were involved. Cheryl Bryant replied that under 53-9-106, MCA, attorney fees cannot be more than five percent of an award. She stated an attorney must submit proof of work done, and that most attorneys work pro bono in these cases.

Senator Mazurek commented that the NCCUSL is working on crime victims legislation and had said that "Montana sticks out like a sore thumb".

Closing by Sponsor:

Senator Fritz commented that no one is satisfied with the funding mechanism in the bill as it is written. He said HB 798 addresses the question of staff and adds a victims of crime coordinator. Senator Fritz explained that the fiscal note does not anticipate additional staff, and said he was shocked to find that DUI victims were not being compensated.

EXECUTIVE ACTION ON SENATE BILL 228

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Svrcek explained his proposed amendments to the bill (Exhibit #7). He said he believes \$150 is not an inappropriate fee for a lawyer's license, and that he sees this as the only way to support the bill.

Senator Mazurek commented that a lot of attorneys can absorb this amount, but it would hit non-active practitioners such as county and city attorneys, as well. Senator Svrcek replied he understood that, and said even beginning attorneys with the state make much more than per capita income. He added that to increase judicial salaries right now is questionable no matter what the funding source, and that it seems more responsible to fund the bill this way.

Senator Yellowtail stated he would resist the amendment. He said it is ill-directed, as it arises from the notion that the courts are used by judges and attorneys. Senator Yellowtail further stated that the courts are used by the people, and attorneys are technicians. He said this legislation is missing the mark, and that he believes the bill as presented offers a reasonable approach.

Senator Svrcek made a motion that his proposed amendments do pass.

Senator Towe stated it looks like funding would have to be increased after two years. Senator Svrcek replied he had the option of phasing in a smaller increase this year and a large



increase next year, but opted to split those amounts to make them even for both years.

Senator Mazurek stated Senator Svrcek's amendments would change the bill to more of a user fee.

The motion made by Senator Svrcek failed 4-8 in a roll call vote (attached).

Senator Yellowtail made a motion that his proposed amendments to SB 228 be approved (Exhibit #8).

Jim Oppedahl, Supreme Court Administrator, explained that the amendments would strike the increase on marriage licenses as they are not a filing fee. He said this would have no fiscal effect on the bill.

The motion made by Senator Yellowtail carried unanimously.

Senator Crippen commented that he was asked to relate the discussion of judicial salaries in caucus. He advised Jim Oppedahl that Montana judges have one of the best retirement programs in the U.S. Jim Oppedahl replied he was not experienced on retirement systems in the U.S., but felt those of surrounding states are comparable to Montana's.

Senator Crippen asked if retired judges received 50 percent of their salary. Jim Oppedahl replied they do at the end of 15 years of service. He commented that Idaho pays 62 percent of salary after 19.6 years of service.

Senator Crippen stated that the sense of the caucus is that the bill only has about 50 percent support.

Senator Yellowtail said he shares these concerns, but is reluctant to negotiate down. He said it is realistic to note that something needs to be done, and it might be reasonable to reduce the increase from \$6,000 to \$4,000.

Senator Harp asked if retirement was capped at 50 percent of if judges could draw more. Senator Mazurek replied it is 3.33 percent per annum for the first 15 years, and will increase to 1.785 percent per annum on July 1, 1991, or at the same rate as PERS thereafter.

Jim Oppedahl advised the Committee that retired judges must continue to be available for judicial service and serve at reduced pay. He said the average age at which most judges join the bench is 50.

Senator Grosfield asked how drawing retirement at age 65 compares with other states. Jim Oppedahl replied that an Idaho judge can retire at any age after 20 years of service, and that a

South Dakota judge can retire at age 55 no matter what the years of service. He said a Wyoming judge can retire after 18 years.

Senator Grosfield asked how retired judges being required to be available to fill in compares with other states. Jim Oppedahl replied he was unsure. He stated that retired judges receive a salary for the position they are filling, which is reduced by the amount of their retirement income.

**Recommendation and Vote:**

Senator Crippen made a motion that SB 228 DO PASS AS AMENDED. The motion carried 11-1 with Senator Svrcek voting no.

**EXECUTIVE ACTION ON SENATE BILL 270**

**Motion:**

**Discussion:**

**Amendments, Discussion, and Votes:**

Senator Grosfield went through the Subcommittee's proposed amendments (Exhibit #9), and made a motion that the amendments be approved.

Senator Svrcek commented that the bill needs a statement of intent.

Senator Grosfield restated his motion to include a statement of intent.

Senator Towe asked about amendment 13. Valencia Lane replied that the intent is that operators are defined in (6) (a) recognizing the intent in subsection 2 (6) (a)

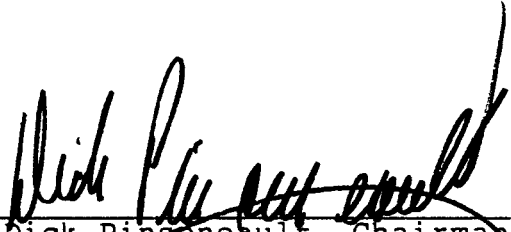
The motion made by Senator Grosfield carried unanimously.

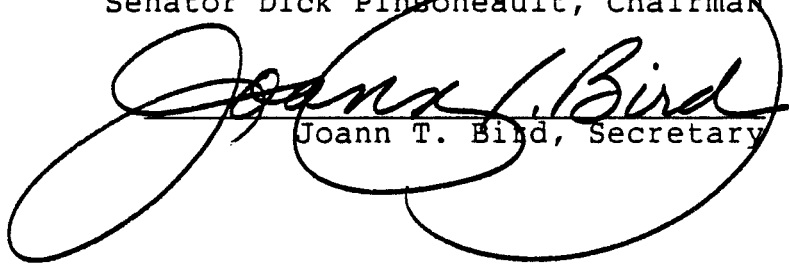
**Recommendation and Vote:**

Senator Mazurek made a motion that SB 270 DO PASS AS AMENDED. The motion carried unanimously.

ADJOURNMENT

Adjournment At: 12 noon

  
\_\_\_\_\_  
Senator Dick Pinoneault, Chairman

  
\_\_\_\_\_  
Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52<sup>nd</sup> LEGISLATIVE SESSION -- 1999

Date 19 Feb 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

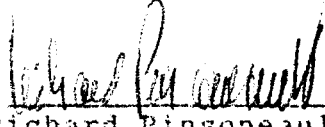
Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 19, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 308 (first reading copy -- white), respectfully report that Senate Bill No. 308 do pass.

Signed: 

Richard Pinsoneault, Chairman

 2/19/91  
Amd. Coord.

SR 2-19  
Sec. of Senate

12:40

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 19, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 364 (first reading copy - white), respectfully report that Senate Bill No. 364 do pass.

Signed: *Richard Pinsoneault*  
Richard Pinsoneault, Chairman

*RB 2/19/91*  
Amd. Coord.

*SB 2/19 12:40*  
Sec. of Senate

## SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
February 19, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 228 (first reading copy -- white), respectfully report that Senate Bill No. 228 be amended and as so amended do pass:

1. Page 5, line 5.  
Following: "~~\$30~~"  
Strike: "\$40"  
Insert: "\$30"
2. Page 5, line 16.  
Following: "~~\$30~~"  
Strike: "\$40"  
Insert: "\$30"
3. Page 6, lines 7 through 9.  
Following: "19-5-404" on line 7  
Strike: remainder of line 7 through "(8)" on line 9
4. Page 6, lines 16 and 17.  
Following: "court fund" on line 16  
Strike: remainder of line 16 through "(8)" on line 17
5. Page 8, line 6.  
Following: "and"  
Strike: "(1)(1) through (1)(2)"  
Insert: "(1)(m) and (1)(n)"
6. Page 9, line 13.  
Following: "~~\$30~~"  
Strike: "\$50"  
Insert: "\$30"
7. Page 9, line 24.  
Following: "~~\$30~~"  
Strike: "\$50"  
Insert: "\$30"
8. Page 10, lines 15 through 17.  
Following: "19-5-404" on line 15

Strike: remainder of line 15 through "(8)" on line 17

9. Page 10, lines 24 and 25.  
Following: "court fund" on line 24  
Strike: remainder of line 24 through "(3)" on line 25

10. Page 12, line 14.  
Following: "and"  
Strike: "(1)(l) through (1)(g)"  
Insert: "(1)(m) and (1)(n)"

Signed: Richard Pinsoneault  
Richard Pinsoneault, Chairman

ALB 2/19/91  
Amd. Coord.

CR 3/11 12:40  
Sec. of Senate



## SENATE STANDING COMMITTEE REPORT

Page 1 of 4  
February 19, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 270 (first reading copy -- white), respectfully report that Senate Bill No. 270 be amended and as so amended do pass:

1. Page 1, line 7.

Following: line 6

Insert: "

### STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] grants rulemaking authority to the department of justice. The department is authorized to adopt rules describing the types of amusement games that may be made available for public play. The legislature intends that the rules describe those games that have been traditionally offered at county fairs and carnivals and that are based on skill or mixed chance and skill. It is further intended that the department consult with carnival operators and other interested persons when developing the rules."

2. Page 1, line 11.

Strike: "4"

Insert: "7"

3. Page 1, line 17.

Following: "player"

Strike: ", "

Insert: "or"

Following: "skill"

Strike: ", or chance"

4. Page 1, lines 21 through 23.

Following: "only" on line 21

Strike: remainder of line 21 through "as" on line 23

5. Page 1, line 24.

Following: "prize"  
Insert: "is awarded to a player"

6. Page 2, line 10.  
Following: "include"  
Insert: ": (1)"

7. Page 2, line 14.  
Following: "eliminated"  
Insert: "; or  
    (ii) an activity that is included as a class III  
    gaming activity pursuant to the federal Indian Gaming  
    Regulatory Act, 25 U.S.C. 2710"

8. Page 2, line 20.  
Following: "operator"  
Insert: ", as defined in subsection (6)(a)."

9. Page 3, line 8.  
Following: "who"  
Insert: ": (a)"

10. Page 3, line 11.  
Strike: "business"  
Insert: "or an"  
Following: "association"  
Strike: ", or similar entity,"  
Insert: "of businesses, such as a shopping center or downtown  
area,"

11. Page 3, line 12.  
Following: "games"  
Strike: "."  
Insert: "; or  
    (b) makes a crane game available for public play on  
    his premises or on premises owned by another person.  
    (7) "Prize" means only tangible personal property with  
    a value of \$50 or less or nontransferable tokens, tickets,  
    or coupons that may be accumulated and redeemed for tangible  
    personal property with a value of \$50 or less."

12. Page 3, line 17.

Following: line 16

Insert: "(1) The amusement game has been authorized by rule as provided for in [section 4].

(2) The appropriate permit to operate the game has been obtained as provided for in [section 3]."

Renumber: subsequent subsections

13. Page 3, line 18.

Strike: "\$5"

Insert: "\$2"

14. Page 4, line 13.

Following: line 12

Insert: "NEW SECTION. Section 3. Permits. (1) Before making an amusement game available for public play, an operator, concessionaire, nonprofit organization, or arcade shall obtain the appropriate permit, as provided in subsections (2) through (4), from the board of county commissioners of the county in which the game is to be made available for public play. The board of county commissioners may charge a fee for issuing a permit under this section.

(2) The board of county commissioners may issue a permit to an operator, as defined in [section 1(6)(a)], a concessionaire, or a nonprofit organization. Each permit entitles the permittee to operate amusement games in the county for a maximum of 14 consecutive days.

(3) The board of county commissioners may issue an operator, as defined in [section 1(6)(b)], an annual permit for each crane game to be operated in the county. A permit is effective January 1 through December 31. An operator, as defined in [section 1(6)(a)], a concessionaire, a nonprofit organization, or an arcade that makes a crane game available for public play need not obtain a permit under this subsection.

(4) The board of county commissioners may issue an annual permit to an arcade. A permit is effective January 1 through December 31.

NEW SECTION. Section 4. Rulemaking authority. The department of justice shall adopt rules describing those amusement games that may be made available for public play under [sections 1 through 7]."

Renumber: subsequent sections

15. Page 4, line 19.

Following: line 18

Insert: "NEW SECTION. Section 6. Gambling and illegal gambling devices and enterprises prohibited. An operator, concessionaire, nonprofit organization, or arcade may not make available for play a gambling or illegal gambling device or enterprise governed under Title 23, chapter 5, parts 1 through 6."

Renumber: subsequent sections

16. Page 6, line 17.

Strike: "4"

Insert: "7"

Signed:   
Richard Pinsoneault, Chairman

LB 4/17/91  
Amd. Coord.

SP 2/20 9:30  
Sec. of Senate

Exhibit #1  
19 Feb 91  
SB 331

Amendments to Senate Bill #331  
First Reading Copy  
for the Senate Judiciary Committee  
Requested by Coroner's Association  
Prepared by: Steve Knecht  
February 19, 1991

1. Page #3 Line 13

- (8) order cessation of any activity by any person or agency, other than the law enforcement agency having jurisdiction, that may obstruct or hinder the orderly conduct of an inquiry to the collection of information or evidence needed for an inquiry.

2. Page #4 Line 1

- (4) there is anything unusual or remarkable about a death that may warrants further action by the county attorney or the law enforcement agency that has jurisdiction.

3. Page #8 Line 19

- (6) preserve evidence involving any human death pursuant to his authority ~~including-placing-under-his~~ and control or the law enforcement agency having jurisdiction, to the extent necessary, any personal and real property that may be related to or involved in the death;

Exhibit #2  
19 Feb 91  
SB 331

Amendment to Senate Bill No. 331  
First Reading Copy

Requested by Senator Franklin and Montana Coroners' Ass.  
For the Committee on Judiciary

February 15, 1991

1. Page 11, lines 19 and 20.

Following: "where the" on line 19

Strike: remainder of line 19 through "found" on line 20;

Insert: "acts or events causing death occurred"

Exhibit #3  
19 Feb 91  
SB 331

Please deliver before today's hearing  
on this bill [TO: PAUL JOHNSON]

Senator Eve Franklin  
Montana State Capitol

2/22/91

Re: Senate Bill 331

Dear Senator Franklin,

I regret that I am unable to be in Helena to testify on behalf of Senate Bill 331 (due to prior commitment to attend a national meeting in forensic sciences).

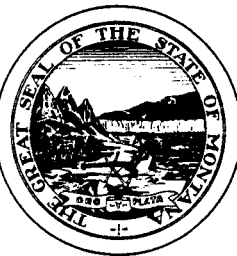
This bill, if passed, will benefit the public by improving death investigation. It clarifies the coroners authority and responsibilities and eliminates "gray areas" in existing statutes. It will aid in collection of state-wide statistical data on sudden unexpected death, possibly leading to recognition (and correction) of heretofore hidden trends in sudden unexpected death.

Ultimately this bill allows the coroner to better achieve what I believe to be his <sup>her</sup> most important obligation & duty — the determination of cause and manner of death within reasonable certainty.

Sincerely,  
Paul Johnson

Exhibit #4  
19 Feb 91  
SB 308

DEPARTMENT OF FAMILY SERVICES



STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005  
HELENA, MONTANA 59604

TESTIMONY IN SUPPORT OF SB 308

AN ACT TO REMOVE ADVANCED AGE  
AS ONE OF THE IMPAIRMENTS WHICH GIVE RISE TO THE  
NEED FOR APPOINTING A GUARDIAN FOR AN INCAPACITATED PERSON

Submitted by John Melcher, Jr.  
Staff Attorney for the Department of Family Services

This bill removes advanced age from the list of conditions expected to cause an incapacitating condition leading to guardianship or conservatorship. The American Association of Retired Persons (AARP) has for several years criticized definitions of incapacity which include advanced age arguing that advanced age in and of itself is not a condition triggering incapacity.<sup>1</sup> In 1989, an analysis by the State Legislation Department of the AARP specifically considered Montana's definition of incapacity. The study concluded that advanced age should be removed from the definition to help insure that the criteria for a finding of incapacity is based on actual functional limitations rather than preconceptions on the ability of the elderly to care for themselves.<sup>2</sup> The American Bar Association's Commission on Legal Problems of the Elderly has also complained that too many definitions of incapacity focus on age instead of the functional problems which actually justify judicial intervention through guardianship or conservatorship.<sup>3</sup>

The Department of Family Services agrees with the AARP and ABA analysis. The Department is also confident that removal of advanced age from the list of conditions expected to cause incapacity will not limit the ability of the district courts to properly adjudicate incapacity. The definition of incapacity in

<sup>1</sup> J. McPhearson, AARP Criminal Justice Division, Domestic Mistreatment of the Elderly, p. 24 (1987);

<sup>2</sup> J. Heller, State Legislation Department of the American Association of Retired Persons, Report on State Surrogate Financial Statutes, p. 6 (1989); see also Appendix to State Surrogate Statutes, Montana State Profile, p. 3 (1989).

<sup>3</sup> R. Brown, American Bar Association Commission on Legal Problems of the Elderly, National Symposium Proposes Recommendations to Improve the Guardianship System, p. 5 (Fall, 1988).



Ex #4

2-19-91

SB 308

the code already encompasses all conceivable causes for incapacity by stating that incapacity may spring from the specific conditions listed, or from "other cause (except minority)". Therefore, while the deletion of advanced age will not narrow judicial inquiry into the cause of an alleged incapacity, it will clarify that advanced age alone is not cause for incapacity.

Mr. (or Madame) Chairman and Members of the Committee:

Montana is currently the only state to my knowledge that denies DUI victims Crime Victims Compensation benefits.

Montana is also the only state that is currently being denied the portion of VOCA funds that is mandated to partially fund crime victims compensation programs as it was recently dictated that only states that pay benefits to DUI victims would qualify for those funds. However, if we change this policy those funds will be returned to us.

Why are we excluding this specific group of crime victims? Are not their injuries and deaths caused directly by criminally injurious conduct. Is not Driving under the Influence a crime? Are not DUI victims also innocent victims of crime?

One of the concerns about including DUI victims in the past was that their claims would break Montana's fund. In fact, statistics obtained from the National MADD organization indicate that very small percentages of the total fund actually go to this group of victims. In California in the 1988-1989 fiscal year total awards to DUI victims only accounted for 5.5% of the total. Also in 1989 in Missouri only 16 awards were made to DUI victims which comprised only 4.31% of all awards granted.

I urge you to take a close look at this legislation and the logic behind it and then advocate to include benefits to this group of victims and begin to take this crime seriously as Montanans have too long chose to see it only as a social problem. Again, we work towards balancing the scales of justice. Thank you.

Diane L. Morin  
Victims Advocate  
Missoula, Montana

Exhibit 5a  
SB 321  
2-19-9

TESTIMONY FOR SB 321

Cheryl Bryant  
Crime Victims Unit

SB 321 makes several changes in the Crime Victims Compensation Act. The three major changes this bill would make are:

1. compensate victims of drunk drivers
2. follow Montana residents out of state
3. eliminate the family exclusion.

The number of claims that will be filed by DUI victims is unknown but awards are estimated at 15 a year. The Highway Patrol figures for 1989 indicate there were 76 fatal accidents and 2126 injury accidents involving alcohol. It is certain that not all of these victims will apply for benefits or be eligible for benefits.

This bill provides two funding mechanisms. It leaves in place the current system which is working well. The claims that are already being paid will not be denied because the money has been used on DUI claims. A separate fund for DUI claims is provided from a mandatory surcharge on intoxicated drivers.

There is also a procedure that will allow a transfer between funds at the end of a fiscal year if claims have not been paid. The statute is not clear as to whether this is an automatic transfer between funds or if the claims to be paid can be considered before making the transfer. The funding source would be sufficient if collection is made as estimated.

To be a federally approved program, the federal government also requires that a state compensate its citizens if the citizen is injured in a state that does not have a crime victims program.

Ex 5a

2-19-91

SB 321

that will pay compensation. At the present time, that means three states, Maine, South Dakota and Nevada. Nevada has a compensation program but only compensates its own residents. Nevada may change its law if it can secure funds to pay the claims it has now. Legislation is pending in Maine and South Dakota to enact a compensation law. There will probably not be many claims in this category.

The family exclusion has been deleted. Again, to be federally approved, the federal government will not allow a state to deny benefits based on the living arrangements of the victim and offender, even if there is an exception for an award in the interests of justice. Benefits can be denied on any other basis or if an award would unjustly benefit the offender. The program must make rules defining unjust enrichment to the offender.

There are other federal requirements that are not present in the bill. The program will be required to make rules on outreach efforts on the Indian reservations. This can be done. The federal government will require extensive reporting on the claims and payments. This can be done also.

# Montana Magistrates Association

Exhibit #6  
19 Feb 91  
SB321

February 19, 1991

SB 321, an act to provide compensation to DUI Victims

Testimony by Pat Bradley, Lobbyist for MMA

Mr. Chairman and Committee Members:

The MMA supports the legislative intent to provide a method of compensating and assisting DUI victims. Monies from fines and forfeitures from courts of limited jurisdiction have been building in the Crime Victim account for several years. But we have certain objections to the funding of this bill and will offer some friendly amendments.

If it is the intent of the legislature to establish a DUI victims fund, we suggest that it be combined with the already in-place fund for crime victims. This fund projects revenues of over \$400,000 in FY 92 and at last report, has a current balance of \$700,000.

HB 548, heard on Feb. 15 in Human Services Committee, perhaps a companion bill to this one, calls for the increasing of the Crime Victims fund by 5%, by diverting this amount from the general fund, which would add another \$130,000 in FY 92 to crime victims. We suggest that this would be adequate funding for both DUI and crime victims funding. Copy of HB 548 and fiscal note are attached.

As a point of information, costs in first offense DUI convictions run about as follows: \$300 fine; \$10 surcharge; \$175 fee for ACT program; cost of one day in jail, \$33; cost of reinstatement of DL \$50 (\$100 for new legislation); a total of \$618, excluding attorneys fees. The assessment of \$150 required in this bill would bring this amount to \$768. Courts' jurisdiction over defendants in DUI cases lasts only 60 days; in Per Se violations, 10 days. Collection is often difficult, and sometimes impossible. This surcharge creates another bookkeeping problem for the courts.

We move to Amend SB 321 as Follows:

Amend to strike: page 11, sub (7), lines 21-24.  
Amend to strike; page 13, sub (7), lines 19-22.  
Amend to strike: page 6, lines 7 and 8.

Amend to combine provisions of HB 548, Sec. 3-10-601, which calls for a 5% increase to a Crime victim-DUI victim combination fund, from the portion of fines and forfeitures distributed to the general fund.

We support SB 321 in concept and with these amendments. Thank you.



Crime Control Division-Crime Victims Compensation Unit

	FY 93			
	Current Law	Proposed Law	Difference	
<u>Expenditures:</u>				
FTE	2.00	2.00	0.00	0.00
Personal Services	48,636	48,636	0	0
Operating Costs	10,029	14,873	4,844	3,584
Benefits and Claims	375,000	410,864	35,864	35,864
Total	433,665	474,373	40,708	39,448
<u>Funding:</u>				
Crime Victims Benefits (02)	433,665	474,373	40,708	39,448
<u>Revenues:</u>				
General Fund (01)	602,244	471,322	(130,922)	(130,922)
Crime Victims Benefits (02)	442,518	573,440	130,922	130,922
Total	1,044,762	1,044,762	0	0
General Fund Impact			(130,922)	(130,922)
Crime Victim Benefits Impact			90,214	91,474

*Current Balance C.V. Fund \$700,000 ✓*

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

None.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Primary and secondary claims may increase as a result of the availability of treatment for family members and increased public awareness efforts.

HB 548

EX-64  
SB 321  
2-19-91

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

reference - SB321  
↑

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0548, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


The proposed legislation would revise the Crime Victims Compensation Act of Montana to provide benefits for certain relatives of injured victims.

ASSUMPTIONS:

1. Claims for victims compensation from primary victims will increase by about 10% due to increased public awareness and public awareness programs. The average payment per primary claim will remain stable. Average claims awarded per year are 272 and the FY90 average payment per award was \$1,247. Total annual primary claim benefits will increase by about \$33,700.
2. Claims from secondary victims will increase 50%. The average payment per secondary claim will remain stable. Average claims awarded per year are 22 and the FY90 average payment per award was \$200. Total annual secondary claim benefits will increase by about \$2,200.
3. ~~Fine revenue from justice of the peace courts will remain stable. Total revenue to the state from these fines will be approximately \$2,618,000 for each year of the 1993 biennium.~~
4. Expenses will be incurred during FY92 for posters on the basis of \$1 per poster in connection with the public awareness program.
5. Expenses for a toll-free number are estimated for twelve months based upon 9 hours of use per month.
6. Current law is represented by the Crime Victims Compensation Unit of the Crime Control Division as reflected in the executive budget recommendation.


FISCAL IMPACT:

See next page.

  
ROD SUNDSTED, BUDGET DIRECTOR  
Office of Budget and Program Planning

DATE

2-7-91



VIVIAN M. BROOKE, PRIMARY SPONSOR

DATE

2/8/91

Fiscal Note for HB0548, as introduced

HB 548

Exhibit # 7  
19 Feb 91  
SB 228

Amendments to Senate Bill No. 228  
First Reading Copy (White)

Requested by Senator Svrcek  
For the Committee on Judiciary

Prepared by Valencia Lane  
February 12, 1991

1. Title, line 7.

Strike: "AND 25-1-201,"

Insert: "37-61-211, AND 37-61-213,"

2. Title, line 8.

Following: "PROVIDING"

Insert: "AN"

Following: "EFFECTIVE"

Strike: "DATES AND A TERMINATION"

3. Page 3, line 25 through page 12, line 15.

Strike: sections 3 and 4 in their entirety

Insert: "Section 3. Section 37-61-211, MCA, is amended to read:

"37-61-211. Annual license tax -- municipal tax prohibited. (1) Every attorney or counselor at law admitted by the supreme court of the state to practice his profession within the state is required to pay a license tax of \$25 \$150 a year. The tax is payable to and collected by the clerk of the supreme court on or before April 1 of each year.

(2) Upon the payment of the tax, the clerk shall issue and deliver a certificate to the person paying the tax, certifying to the payment of the license tax and stating the period covered by the payment.

(3) A license tax may not be imposed upon attorneys by a municipality or any other subdivision of the state."

Section 4. Section 37-61-213, MCA, is amended to read:

"37-61-213. Disposition of license tax. (1) All moneys so collected during any month shall, on or before the first day of the succeeding month, be delivered to and deposited with the state treasurer by the clerk of the supreme court, and the state treasurer shall deposit such moneys in the general fund.

(2) The state treasurer shall keep an accounting of the amount deposited in the general fund pursuant to subsection (1) and 85% of that amount must be used to fund a portion of judicial salaries."

Renumber: subsequent sections

4. Page 12, lines 16 and 17.

Strike: section 5 in its entirety



Exhibit # 8  
19 Feb 91  
SB 228

Amendments to Senate Bill No. 228  
First Reading Copy (White)

Requested by Senator Yellowtail  
(for Jim Oppedahl)

For the Committee on Judiciary

Prepared by Valencia Lane  
February 13, 1991

1. Page 5, line 5.  
Following: "\$30"  
Strike: "\$40"  
Insert: "\$30"
2. Page 5, line 16.  
Following: "\$30"  
Strike: "\$40"  
Insert: "\$30"
3. Page 6, lines 7 through 9.  
Following: "19-5-404" on line 7  
Strike: remainder of line 7 through "(8)" on line 9
4. Page 6, lines 16 and 17.  
Following: "court fund" on line 16  
Strike: remainder of line 16 through "(8)" on line 17
5. Page 8, line 6.  
Following: "and"  
Strike: "(1)(1) through (1)(o)"  
Insert: "(1)(m) and (1)(n)"
6. Page 9, line 13.  
Following: "\$30"  
Strike: "\$50"  
Insert: "\$30"
7. Page 9, line 24.  
Following: "\$30"  
Strike: "\$50"  
Insert: "\$30"
8. Page 10, lines 15 through 17.  
Following: "19-5-404" on line 15

Exhibit #9  
19 Feb 91  
SB 270

Amendments to Senate Bill No. 270  
First Reading Copy (White)

Requested by Subcommittee  
(Mazurek, Rye, Grosfield)  
For the Committee on Judiciary

Prepared by Valencia Lane  
February 18, 1991

1. Page 1, line 11.  
Strike: "4"  
Insert: "7"

2. Page 1, line 17.  
Following: "player"  
Strike: ", "  
Insert: "or"  
Following: "skill"  
Strike: ", or chance"

3. Page 1, lines 21 through 23.  
Following: "only" on line 21  
Strike: remainder of line 21 through "as" on line 23

4. Page 1, line 24.  
Following: "prize"  
Insert: "is awarded to a player"

5. Page 2, line 10.  
Following: "include"  
Insert: "(i)"

6. Page 2, line 14.  
Following: "eliminated"  
Insert: "; or  
(ii) an activity that is included as a Class III  
gaming activity pursuant to section 2710 of Title 25,  
U.S.C., of the federal Indian Gaming Regulatory Act"

7. Page 2, line 20.  
Following: "operator"  
Insert: "as defined in subsection (6)(a)"

8. Page 3, line 8.  
Following: "who".

Insert: ": (a)"

9. Page 3, line 11.

Strike: "business"

Insert: "or an"

Following: "association"

Insert: "of businesses such as a shopping center or downtown area"

Following: "association"

Strike: ", or similar entity,"

10. Page 3, line 12.

Following: "games"

Strike: "."

Insert: "; or

(b) makes a crane game available for public play on his premises or a premises owned by another person.

(7) "Prize" means only tangible personal property with a value of \$50 or less or nontransferable tokens, tickets, or coupons that may be accumulated and redeemed for tangible personal property with a value of \$50 or less."

11. Page 3, line 17.

Following: line 16

Insert: "(1) The amusement game has been authorized by rule as provided for in [section 4].

(2) The appropriate permit to operate the game has been obtained as provided for in [section 3]."

Renumber: subsequent subsections

12. Page 3, line 18.

Strike: "\$5"

Insert: "\$2"

13. Page 4, line 13.

Following: line 12

Insert: "NEW SECTION. Section 3. Permits. (1) Before making an amusement game available for public play, an operator, concessionaire, nonprofit organization, or arcade must obtain the appropriate permit as provided in subsections (2) through (4) from the board of county commissioners of the county where the game is to be made available for public play. The board of county commissioners may charge a fee for issuing a permit under this section.

(2) The board of county commissioners may issue a permit to an operator as defined in subsection (6)(a) of [section 1], concessionaire, or nonprofit organization. Each permit entitles the permittee to operate amusement games in the county for a maximum of 14 consecutive days.

(3) The board of county commissioners may issue an

operator as defined in subsection (6)(b) of [section 1] an annual permit for each crane game to be operated in the county. A permit is effective January 1 through December 31. An operator as defined in subsection (1)(a), concessionaire, nonprofit organization, or arcade that makes a crane game available for public play need not obtain a permit under this subsection (3).

(4) The board of county commissioners may issue an annual permit to an arcade. A permit is effective January 1 through December 31.

NEW SECTION. Section 4. Rulemaking authority. The department of justice shall adopt rules describing those amusement games that may be made available for public play under [sections 1 through 7]."

Renumber: subsequent sections

14. Page 4, line 19.

Following: line 18

Insert: "NEW SECTION. Section 6. Gambling and illegal gambling devices and enterprises prohibited. An arcade, concessionaire, nonprofit organization, or operator may not make available for play a gambling or illegal gambling device or enterprise governed under Title 23, chapter 5, parts 1 through 6."

Renumber: subsequent sections

15. Page 6, line 17.

Strike: "4"

Insert: "7"

# ROLL CALL VOTE #1

SENATE COMMITTEE JUDICIARY

Date 19 Feb 91 Bill No. SB 364 Time 10:30 am

NAME	YES	NO
Sen. Brown	✓	
Sen. Crippen	A	
Sen. Doherty	✓	
Sen. Grosfield	✓	
Sen. Halligan		✓
Sen. Harp		✓
Sen. Mazurek		✓
Sen. Rye		✓
Sen. Svrcek		
Sen. Towe	✓	
Sen. Yellowtail		✓
Sen. Pinsoneault		✓
	4	6

Jody Bird  
Secretary

Sen. Dick Pinsoneault  
Chairman

Motion: Towe - move amend - failed

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# ROLL CALL VOTE #2

SENATE COMMITTEE JUDICIARY

Date 19 Feb 91 Bill No. SB 228 Time 10:45am

NAME	YES	NO
Sen. Brown		✓
Sen. Crippen		✓
Sen. Doherty		✓
Sen. Grosfield	✓	
Sen. Halligan		✓
Sen. Harp	✓	
Sen. Mazurek		✓
Sen. Rye	✓	
Sen. Svrcek	✓	
Sen. Towe		✓
Sen. Yellowtail		✓
Sen. Pinsonneault		✓
	4	8

Jody Bird  
Secretary

Sen. Dick Pinsonneault  
Chairman

Motion: Svrcek - amend - failed

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ROLL CALL VOTE #3

SENATE COMMITTEE JUDICIARY

Date 19 Feb 91 Bill No. SB228 Time 11:33am

NAME	YES	NO
Sen. Brown	✓	
Sen. Crippen	✓	
Sen. Doherty	✓	
Sen. Grosfield	✓	
Sen. Halligan	✓	
Sen. Harp	✓	
Sen. Mazurek	✓	
Sen. Rye	✓	
Sen. Svrcek		✓
Sen. Towe	✓	
Sen. Yellowtail	✓	
Sen. Pinsonneault	✓	

Jody Bird  
Secretary

Sen. Dick Pinsonneault  
Chairman

Motion: Crippen - DPAA - carried

DATE 19 Feb 91

COMMITTEE ON

# VISITORS' REGISTER

[illegible]