

## **MINUTES**

### **MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **BRUCE D. CRIPPEN CHAIRMAN**, on February 15, 1995, at 8:00 A.M.

#### **ROLL CALL**

**Members Present:**

Sen. Bruce D. Crippen, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Larry L. Baer (R)  
Sen. Sharon Estrada (R)  
Sen. Lorents Grosfield (R)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Mike Halligan (D)  
Sen. Linda J. Nelson (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Valencia Lane, Legislative Council  
Judy Feland, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 237, SB 316, SB 333, SB 350  
Executive Action: SB 350, SB 237, SB 316, SB 333, SJR 7,  
SB 206

#### **HEARING ON SB 350**

**Opening Statement by Sponsor:**

**SENATOR FRED VAN VALKENBURG**, Senate District 32, Missoula, sponsored SB 350. He said the bill would allow the Department of Corrections to tell a new employer that a person (who is on parole) has a history of stealing from employers. He said it was a logical idea that employers should know about the prior thefts, but the Department of Corrections and Human Services parole staff is prohibited from providing that information to employers because it would violate the privacy of the probationer or

parolee. The sponsor said they need to be more concerned about the victims out there who are good enough to employ people who have already been in trouble with the law before and to try to protect them. He said he personally knew of three or four cases in which this has happened since he went to work in a county attorney's office. In one particular case, an employer in Missoula County lost over \$50,000 as a result of theft by a person already convicted of theft from a previous employer. He urged passage of the bill.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR SHARON ESTRADA asked the sponsor if there was a fiscal note.

SENATOR VAN VALKENBURG said there was not. He said the only cost involved would be a phone call to the employer.

Closing by Sponsor:

SENATOR VAN VALKENBURG closed on SB 350 without further comment.

HEARING ON SB 237, SB 316 and SB 333

Opening Statement by Sponsor:

SENATOR AL BISHOP, Senate District 9, Billings, sponsored SB 237. He said the bill would make it a misdemeanor to have an open container containing an alcoholic beverage in a motor vehicle on any ways of the state open to the public outside of cities and towns. He said it was felt that cities and municipalities would deal with the issue on their own, as many already do. Excepted would be public conveyances that have been chartered for group use, the living quarters of a motor home, recreational vehicle or camper, or a paying passenger in a for-hire vehicle licensed under city, county, or state law.

Proponents' Testimony:

Attorney General Joe Mazurek, said that he and others at the hearing were going to testify on a package of bills, SB 237, SB 316 and SB 333. They are a part of the recommendation of a Task Force appointed by Governor Racicot and himself last June.

Opening Statement by Sponsor:

**SENATOR AL BISHOP** continued his opening statement after it was determined by the chairman, proponents and the committee that the three bills were related, and would be addressed in a group method.

SB 316, he said, would provide for a preliminary alcohol screening test by an officer who has a particular suspicion that someone is driving under the influence. This is a breath test that is not mandatory but the refusal to take it will cause the person to have their drivers' license suspended for a year. The bill would also create a new alcohol-related crime for drivers under the age of 21. A blood alcohol of .02 will subject them to the penalty provided. The rationale for this provision is that they are not supposed to be drinking at all. Any level of alcohol in the blood would be prohibited.

SB 333 requires alcohol or drug treatment to be ordered for first-time DUI offenders if a certified counselor concludes that it's needed. The bill would also stipulate that the offender could not be issued a restricted probationary license until the treatment is completed.

Proponents' Testimony:

**Attorney General Joe Mazurek** supported the package of bills, SB 237, SB 316 and SB 333. In 1993, he said, 194 persons lost their lives on Montana highways. 107 of those died in accidents involving alcohol. Generally over half of all the traffic deaths each year are accidents in which the driver was under the influence of alcohol or drugs. One statistic he noted was that last years' numbers showed 55 per cent of the highway fatalities in the last year were alcohol related, the highest percentage of the total in the last 10 years. In 1983 significant improvements were made in the driving under the influence of drug and alcohol laws. At that time the highway death toll decreased dramatically. It had been at an all-time high of 338 and dropped to 200. It is now hovering at or near that mark for the past ten years. He said the numbers were starting to creep up again and that prompted the legislation. The bills are aimed at target groups. The first one is teens who may be experimenting with drugs and alcohol and driving. They hope to adopt a zero tolerance standard, although it does not created a DUI offense. It deals with them on a similar basis as "minors in possession." Other aspects of the bills address social drinkers who are generally responsible but need a nudge to keep open containers out of vehicles. Another part of the package is the impact it would have on repeat offenders. This group is small in size, he said, but dramatically increasing. In the last 10 years the percentage of multiple offenders has gone from 23 to over 30 per cent. The percentage of second offenders has gone from 19 to 23 per cent. The third-time offenders has doubled from 4 to 8 per cent. He cited an example of a 8-time offender who was involved

in two fatal accidents in Lewis and Clark County. The Task Force recommended the inclusion a fourth-offense DUI felony, and the bills reflect that change.

As a result of the increasing DUI's and increased fatalities arising from those, he and **Governor Racicot** jointly, with the assistance of the Highway Traffic Safety Division, created a State DUI Task Force which met beginning last June. It included 14 Montana citizens headed by former Yellowstone County Attorney Harold Hanser, who has always been an advocate for stronger DUI laws. They worked collectively, took testimony from law enforcement officials from across the country and Canada, hired expert consultants and put together the package of bills. He said enactment of the bills would allow law enforcement officials in the state the ability to vigorously enforce and perhaps effectively deal with this deadly problem.

**Joe Roberts**, representing The DUI Prevention Committee, said he had been authorized by **Governor Racicot** to indicate his full support of the package of legislation before the committee.

**John Campbell** introduced his wife, Jill. They represented themselves. They testified that their daughter, Jana, was killed last August by a drunk driver. **Ms. Campbell** told the committee that they were not against drinking, but to ask their support in all of the bills. In Lake County last year, they had five deaths caused by drunk drivers, she reported. Two of them were close to them, their daughter Jana, and her friend, Anita. They were coming home from a rodeo when a drunk driver passed on a double-double line. Their car was hit head-on and Anita was killed outright. **Ms. Campbell** described the events of the night at the hospital and the subsequent death of their daughter. The doctor that was in charge of the same emergency room in Kalispell was the drunk driver who killed the girls. They also submitted written testimony. (EXHIBIT 1)

**Harold Hanser**, former Yellowstone County Attorney, represented himself and the State DUI Task Force. He explained the working of the task force. There is nothing in the proposed legislation that does not exist in some other jurisdiction. A technical team from the National Department of Transportation came to Montana and reviewed the DUI laws and had three pages of shortfalls as compared to other jurisdictions. He said that while Montana DUI problems have remained consistent, other states with higher traffic volumes have had decreases. He said the laws in Montana have thus far not allowed for a effective deterrent. A deterrent will work only if people believe something will happen and the penalty will bite. In Montana, he felt, people had no deep feeling that they would be finally convicted of DUI.

**Mr. Hanser** said that we now know that the blood alcohol content can be accurately measured and tested. We also know that there is a direct relationship between any individuals' ability to operate a motor vehicle safely with the amount of alcohol in the

system. The impairment starts in the area of .03, he said, and that is why the federal government is going to zero tolerance for people driving commercially. He said that we have a presumptive level at .10. Many states have moved that level to .08. Some are talking about going lower. The average arrest in Montana is at .18. A person at a blood alcohol level of .18 is visibly impaired, or drunk. The most essential tool in this legislation would be the ability to do the on-site testing. He said that the miniature breathalyzers would resolve the issue right on the spot after the driver is stopped by an officer for reasonable suspicion. Without a BAC (blood alcohol content) test, he said, prosecution is a major lawsuit. Many of the cases take a year or more to prosecute and many just fall through the cracks and "go away." In this proposed legislation, the driver can refuse the test, and the penalty would be the same as a conviction from the standpoint of the license. It would be suspended for a period of six months. In Canada, if a person refuses the on-site test, the penalty is the same as conviction. They take the drivers' license and have the car hauled away. In North Dakota, the license is administratively revoked for one year on first offense, two years on the second offense, and three years for subsequent. There are provisions for habitual offenders in these new bills, too. He said there had been problems with the seizure of the vehicle law enacted last session in that people transfer their vehicles to someone else pending litigation. He said that in Canada the first offense is seizure of the vehicle for 30 days. Second offense for a person who continues to drive without a license is forfeiture. He said that non-prison, non-jail sanctions against vehicles and drivers' licenses are the most effective.

**Peter Funk, former Assistant Attorney General, lawyer, Helena,** said he had worked with the State DUI Task Force to draft this legislation. He had worked with the Motor Vehicle Division when he was attached to the Attorney General's office, so he had experience with existing laws and drafted these bills with a view toward existing structures.

SB 237 is straightforward, he said, and was taken almost word-for-word from the Washington statute. It makes three things a misdemeanor: 1) drinking, 2) possessing, and 3) storage, of open containers of alcohol illegal within motor vehicles. It includes an exception for storage as long as an open container is not stored in an area that is regularly available for the passengers. It would also have a standard misdemeanor offense penalty provision in it. It also excludes areas within the boundaries of cities and towns. This is done in recognition of cities and towns to legislate in this same area.

SB 316 is a bill which combined many ideas into one package, he said. He discussed the preliminary breath testing provision. He said it was an implied consent scheme like the existing scheme, wherein the law enforcement officer has the ability to ask for the test, the driver may refuse, but if the driver refuses, there

are fairly severe sanctions. The bill refers to the existing statutes in terms of procedures and sanctions involved. Currently, a law enforcement official cannot ask for a blood sample until after the arrest has been made. The purpose of the Preliminary Alcohol Screenings (PAS), is to give the officer some alcohol concentration information on the driver in order to help them make up their mind whether to proceed to an arrest. The existing law presumes a person under the influence at .10 or over. The trigger for the stop is a technical legal phrase called, "particularized suspicion." This is the standard for investigative stop and well-recognized in the Supreme Court. It means if the officer has some facts on which they can reasonably suspect that a person is under the influence, it meets the test of particularized suspicions. Examples would be swerving and driving erratically. There is an appeal provision built into that section, as well, that would reference the existing law, so that if the driver refuses the test, it would get into district court very quickly. The rest of the procedural steps in the implied consent law presently are built in to the bill. The PAS would require the Department of Justice to certify both officers and the devices that are used before they are used.

Section 2 would create a new criminal offense in the state, he said, that makes it unlawful for a person under the age of 21 to drive with a blood alcohol concentration of .02 or more. That is the lowest level that the machines can be accurate. Section 3 of the bill is designed to prohibit transfers of vehicles that are subject to forfeiture. Section 4 would make it clear that a prosecution for a DUI may not be deferred. Section 5 amends existing law. This would deal with people who continue to drive when their license is suspended or revoked because of DUI. If the license is gone because of drinking, there would be additional sanctions. On first conviction, there would be a 30-day vehicle seizure and on a second or subsequent conviction, the vehicle would be forfeited. Section 6 of the bill takes the existing implied consent law and changes the penalty for a refusal from 90 days to six months. If a person is convicted of DUI, they would face a 6-month drivers' license suspension. If they refuse a implied consent test, they only get a 90-day suspension. He said it was the feeling of the Task Force that a test refusal ought to be at least as severe as a sanction as being convicted of the first offense. The idea is that more people will take the test, because there isn't much incentive the other way. Section 8 is the DUI sentencing statute. It makes three primary changes: 1) It creates a felony-level offense if the offense is a fourth, or subsequent offense. 2) Convictions would be added over a person's lifetime, if the offense is a fourth, or subsequent offense. Montana presently has a five-year gap. Persons with convictions earlier than five years are sentenced as a first-time offender; previous convictions are disregarded. 3) The DUI offense may not be deferred. Section 9 would provide that the same three changes mentioned are made in the excessive alcohol concentration offense, in other words, fourth offense felony, convictions for a lifetime and no

deferrals. Two other changes include expunging of records to address the five-year gap. Presently the Department of Justice takes all records relating to that particular defendant before the gap, and destroys them. They proposed to make that information confidential criminal justice information and public disclosure would not be allowed without a court order. It would exactly match the language of the DUI statute. The second provision would say that a person convicted of a concentrated alcohol offense, any earlier DUI's would be counted the same as a BAC offense.

SB 333 is focused on the treatment of DUI offenders. Presently there are a multitude of different mandates involving treatment. First-time offenders have to do an alcohol information course and may or may not be ordered to undergo treatment. Second or subsequent offenders must undergo treatment. This bill would change the provisions to read: 1) If the offender is found to be chemically-dependent on a first conviction, they must undergo treatment. 2) If the courts order treatment, they must order it based on the opinion of the certified chemical dependency counselor and that counselor must use accepted and adopted statewide guidelines. The language would also give the judge some guidelines when facing two counselors. 3) Changes are designed to tell the Department of Justice they may not issue probationary drivers' licenses until the person has COMPLETED whatever treatment is proscribed.

**Nancy K. Jovin, Ravalli County DUI Task Force Coordinator**, said she got the job as a result of a drinking/driving accident herself. She was a bride and a widow in the same day when she and her new husband were involved in an accident. She had 18 reconstructive surgeries at a cost of hundreds of thousands of dollars. She said that the cost in lives and dollars in Montana is immeasurable from drinking drivers. **Ms. Jovin** said the open container law was past due. She discussed and was in agreement with the provisions of the intended legislation. She submitted written testimony. (EXHIBIT 2)

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**Darryl Bruno, representing the Department of Corrections and Human Services**, said that the Department stands in support of SB 316, Section 2 and view it as a very good instrument for the DUI program. They hoped it would reduce the number of first offenders. SB 333, by requiring the first offenders to attend treatment, will reduce the number of repeat offenders, he said. Ultimately, it would reduce property and medical damage, loss of life and probably do a part in reducing some of the overcrowding in the jails. He also submitted written testimony. (EXHIBIT 3)

**Colonel Craig Reap, representing the Montana Highway Patrol**, said that their organization supported all of the changes and new laws regarding DUI offenses. They were part of the Task Force as well. He said it was frustrating to law enforcement officials to

meet and greet the same individuals on a repeat basis. He said that in particular, the portable breath testing device, will give them another tool to use. He urged support of the bills.

**Mark Cady, Police Officer, Billings, and a member of the DUI Task Force,** voiced his support for the bills. He said he had been a victim of a drunk driving accident. He had investigated over 50 fatalities in his career and every one of them involved a drinking driver. The portable breath analyzer would be a very valuable tool, he said, in the fight against drunk driving. He discussed the revocation of the license penalties. Currently, if a person is convicted of a DUI, their license is revoked. If a person is a habitual offender, their license is revoked. This bill would provide for the impounding of the car or making it inoperable. The second offense would cause forfeiture. He stated that the drivers' license does not turn the key to the car. He said the proposed legislation package would be a help to police officers and all Montanans.

**George Bonini, representing the Montana Traffic Education Association,** confirmed that the Association supported the legislation. They had a particular concern with SB 237 because of the increase in young people drinking in vehicles. They hoped the open container law would address that problem. He urged a Do Pass resolution.

**Clarence Brazil, Polson, represented himself.** Mr. Brazil said that Montanans seemed to think they had the God-given right to drive drunk. He quoted the figures from SB 237, saying Montana recorded 7,000 DUI convictions annually. He said it was close to 10 per cent of the population. He said there was a disregard for loss of life. The suspension of the drivers' license was important to him in regard to multiple offenders. He said many of the drunk drivers end up with suspended sentences and serve no jail time.

**Peggy Wheeler, represented herself.** Ms. Wheeler related that her daughter, Anita, was one of the girls killed in Kalispell by a drunk doctor. She said people convicted of negligent homicide in her area were given 90 days with 30 days in treatment and 60 days in jail. She felt it was not enough. She asked the committee to get the drunk drivers off the road.

**Bill Ware, Police Chief, Helena, also represented The Association of Police Chiefs in Montana, and served on the DUI Task Force.** He supported the three-piece legislative package. He stated that in the Helena area up to 50 per cent of the DUI convictions were repeat offenders. He said the offenders were going through the system again and again.

**Jerry Archer, representing the Billings Police Department and member of the DUI Task Force,** said that since January 1, he had responded to three fatality accidents, two involving alcohol. It has to stop, he said.



**Troy McGee, Captain, Helena Police Department, represented the Montana Police Protective Association.** He said the membership was made up of approximately 450 police officers around the state. The Association strongly supported the bills, he said.

**Francie McLean, Gallatin County DUI Coordinator,** asked to add Gallatin County's support to the package of legislation. She submitted five pages of signatures to support the bills.  
(EXHIBIT 4)

**Tom Huddleston, representing the Helena City Commission, Lewis and Clark DUI Task Force and himself,** submitted the following letter. (EXHIBIT 5)

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

**SENATOR MIKE HALLIGAN** stated that he was on the Task Force. The juvenile sentencing laws were not going to be changed but rather the thresholds would be changed. The quickest way to get to a juvenile was taking the license away for a longer period, he said. He said it was 90 days. He asked **Mr. Hanser** if the Task Force had considered extending juvenile laws as well?

**Mr. Hanser** said they did not. The main emphasis, he said, was to get to the zero tolerance.

**Peter Funk** said the idea was to use the minor in possession charge. There was some consideration given to having a youth sentenced under the DUI statute if they were convicted of the new offense included in the bill. But because of the difference in the blood alcohol level, they did not feel that it was appropriate to have the same sanction that an adult would have at .10. The first offense under the statute is a 90-day confiscation of license which would be done by the local sentencing judge. The Motor Vehicle Division in Helena would become involved on a second conviction in terms of a formal suspension.

**SENATOR HALLIGAN** asked **Mr. Funk** if the juveniles could get a probationary license during that time. **Mr. Funk** thought so. The senator further inquired about breath testing and blood testing. **Mr. Funk** said he did not intend that a blood test would be administered, but a portable breath test would. SB 316 would not authorize a urine or blood test, he said.

**SENATOR HALLIGAN** asked if the machines were sophisticated enough to determine the .02 for juveniles and if the results would not be contested in court? In the past, defense attorneys had claimed the breathalyzers were not accurate, he said.

**Mr. Funk** said the people at the crime lab had maintained they were accurate from .02 and up, which is the criminal level in the new youth statute. There would be a period of time to certify the machines, making sure the State Crime Lab was comfortable with their use. Many other states use them now.

**SENATOR HALLIGAN** asked if there was enough money to make sure they were accurate. Also, he asked **Mr. Hanser** about the third offense as opposed to the fourth offense as a felony. Are other states doing this on the fourth offense? Where did they reach that threshold?

**Mr. Hanser** said they started with the enhancement. There was so much interest for a fourth offense, but he considered it a judgement call. On the device discussion, he said that the field machines were used in California and allowed in court. In Montana, the hand-held devices would be a preliminary action and people would be allowed to take the test on the larger device.

**SENATOR LORENTS GROSFIELD** asked **Mr. Funk** about SB 237, 1B and 1C. He asked what the difference was between possess and keep.

**Mr. Funk** said that possession was a harder issue to prove. In order to "possess" under the law, a person has to have the ability to control, and the ability to terminate control. It would be a natural progression from drinking, to possession, to storage, with drinking being inside the body. Storage is another angle to have a prosecutable offense, he said, if possession or actual drinking cannot be proved.

**SENATOR GROSFIELD** said they could keep it in the trunk, but they could not possess it in the trunk. He asked if anything could be in the vehicle as far as possession goes.

**Mr. Funk** said it was true. He did not know how a person could possess something in one of those areas that is not available to the passengers unless you are also in that area. He thought possession was only to be used where the container is seen in the hand.

**SENATOR GROSFIELD** asked if he planned a kegger and he was the designated driver, and they put their empties and some leftover liquor in the car and are heading home, would he be in trouble even if he had not had anything to drink?

**Mr. Funk** said he would have a problem under the storage paragraph.

**SENATOR GROSFIELD** said there would be no incentive for a designated driver status.

**Mr. Funk** said it would be true, if they had an open container. He said he hope the designated driver concept would be used beyond the transportation of alcoholic beverages, perhaps for

people traveling home at night without drinks with them. Clearly, the bill would make it unlawful to have alcoholic drinks in the passenger compartments of vehicles. It would apply to designated drivers or anybody driving.

**CHAIRMAN BRUCE CRIPPEN** asked if bottles of alcohol were transported from one house to another in the trunk, would it violate the provision?

**Mr. Funk** referred to Subsection C, following "unless" on Line 21, which says that open containers of alcohol can be transported.

**CHAIRMAN CRIPPEN** followed with, "if the registered owner is not present in the vehicle."

**Mr. Funk** said the qualifying language applied only to the phrase, "or the driver." The person that is responsible for the storage violation is either the registered owner or the driver.

**SENATOR GROSFIELD** asked about the kegger example. He said what was not consumed should be dumped on the ground.

**Mr. Funk** said they could put it in the trunk.

**SENATOR GROSFIELD** asked if an empty can may contain a milliliter of beer. Would that be an open container in a technical sense?

**Mr. Funk** said it may be something that should be clarified. He did not disagree with that, but thought that a police department or prosecutor would not want to go further with a suit based on that information.

**SENATOR STEVE DOHERTY** asked about a situation of adults and children in a Suburban in which beer and pop was mixed in a cooler.

**Mr. Funk** said the cooler had better be in the back end.

**CHAIRMAN CRIPPEN** asked if having a beer out in the wilderness was in violation as long as it happened in the car?

**Mr. Funk** said it would be correct. He added that there was nothing in the open container that would allow a law enforcement officer to go in that cooler (on **SENATOR DOHERTY'S** question) or to open a closed cooler or package inside a vehicle. It does not give law enforcement any greater ability to look in things than they already have now.

**SENATOR GROSFIELD** asked to follow-up. He said on Lines 22 and 23 of Subsection C, it says the utility or glove compartment is considered to be within the area. He said those two compartments are sealed, so there was an implication that an officer would be looking into those. And he wondered why they were even in the bill?

**Mr. Funk** said they were there because they were part of the Washington statute. He would not read the language as giving police an increased ability to conduct searches and seizures. He said it could be stricken.

**SENATOR LARRY BAER** said that search and seizure was covered by present law. He said people had better know the law. In a Suburban, they should store the alcohol in the back, away from the driver.

**SENATOR BISHOP** asked **Mr. Funk** about the kegger question. On Line 17 of SB 237, Page 1, it says, "where contents are partially removed," and he wondered if a sharp defense lawyer could pounce on that?

**Mr. Funk** said sharp defense lawyers will seize on every word of the bill in defending their client. He said they could perhaps come up with finely-tuned language.

**SENATOR BISHOP** asked if it would help to say, "fully," or "completely," or "partially"?

**Mr. Funk** said it was up to the committee.

**Valencia Lane** stated that the point of the bill was to prohibit open containers in the car, meaning you are not supposed to be drinking as you are driving. She did not think that the intent of the bill was that a person was not to have empty cans in the car, rather open containers. She did not know if they should amend the bill to include empties.

**Mr. Funk** said a sentence could be included that said, "this section of law is not intended to include empty beverage containers."

**CHAIRMAN CRIPPEN** asked if all incorporated cities and towns in Montana had open container laws?

**Mr. Funk** said it was not the norm.

**CHAIRMAN CRIPPEN** asked **Attorney General Mazurek** if the state could supersede local law in cities and town?

**Attorney General Mazurek** responded that most major communities had open container rules. In a number of smaller communities, they waive them for events, such as the Augusta Rodeo, he said. He said the state did clearly have the authority, but they may want to consider these special events.

**Captain Troy McGee** said that the open container law in Billings covered all public property in addition to vehicles. These bills would apply only to vehicles. Local control is generally the public property type of control, he said, like in a park.

**SENATOR BISHOP** asked **Mr. Funk** about Line 13, Page 1, of Subsection 237. He said that it mentions an incorporated city or town. He asked about Reedpoint, which is not an incorporated town, and how the bill would relate to their sheep event?

**Mr. Funk** said that the bill would cover unincorporated areas. He said unincorporated cities and towns do not have the authority to legislate in this area. They cannot pass ordinances.

**SENATOR GROSFIELD** referred to SB 361. He asked about the certification of devices by the Department as mentioned on Page 2, Subsection 8. He asked if they were certified periodically?

**Mr. Funk** said the certification would remain in effect as long as the instrument make and model did not change.

**SENATOR GROSFIELD** asked a technical question on Subsection 2 on the .02 alcohol count. He quoted current statute, 401, Subsection 4A, "if there is less than .05, it may be inferred that the person was not under the influence." He asked if that would be inconsistent?

**Mr. Funk** said he did not think so. He said they were not making any statement about whether a person is "under the influence." They were just referring to the blood alcohol level.

**SENATOR GROSFIELD** referred to Page 4, Subsection 6, regarding seizure of the car, "owned and operated by the convicted person." He asked if that excluded a car that was borrowed. **Mr. Funk** said that was correct. The senator further inquired about multiple DUI offenders who might register the car in their wife's name.

**Mr. Funk** replied that the forfeiture law was passed in 1991. He referred to Line 21, concerning joint ownership. He said that type of scheme exists in the language and they had attempted to build it into these new bills. It says that joint ownership shall not be barred to these types of actions, but gives the court an "unless", or an out, so that the car would not be taken from an owner at the judge's discretion. Joint ownership generally should not be a bar to those types of actions, he said.

**SENATOR GROSFIELD** asked if the 10-time DUI offender had his own car, yet registered that car in his wife's name, would he be able to prevent the court from taking the car?

**Mr. Funk** said this was correct, unless it was registered in a joint situation. If the car is registered in any other parties' name, and the drivers name is not on that registration, that car is not subject to this process.

**SENATOR GROSFIELD** referred to Page 5, Line 10. He asked about the test for drugs, "may not be given."

**Mr. Funk** replied that it was part of a compromise reached by the last legislature to authorize drug testing.

**SENATOR GROSFIELD** asked about the .01, .02., .05 classifications of consumption and wondered what it would take (in terms of 3 beers, 4 glasses of wine, etc.) to register these amounts. Several of the proponents answered that it would depend on the size of the person, body weight, food intake, and many other variables.

**Albert Goke, Minister of the Highway Traffic Safety Division,** said that for a minor, typically one beer would make them show in excess of .02.

**SENATOR GROSFIELD** asked about the reasons behind a temporary permit on Line 23.

**Mr. Funk** said the intent was to enable someone whose license is taken to exercise their right to appeal. It is a Constitutionally-protective mechanism more than anything else, that allows a person a time period in which to address filing an appeal. He said they were taking a license, which has been held to be some form of a property right, without any kind of a hearing. It allows for a hearing or a fact-finding body as fast as possible after the license has been taken.

**SENATOR GROSFIELD** posed a problem with a person driving drunk on a 72-hour permit. Would the person just get another one, he asked?

**Mr. Funk** said he was not aware of a process for taking away the 72-hour permit.

**SENATOR ESTRADA** discussed the alcohol content in a glass of wine with **Officer Cady**. It was ascertained that too many variables would exist to determine what the blood count would show. She liked the bills, but wanted assurance that they would be done right.

**SENATOR LINDA NELSON** asked if they had enough portable breath testing devices to implement the bill? And therefore, would they need a fiscal note, she asked?

**Mr. Funk** answered that nothing in the bill requiring them to have the equipment and they understood it would take time. They had some now, he said, and \$100,000 had been allocated for the 1996-97 for the Department of Justice to help equip the officers with the devices. The devices cost about \$500.

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**SENATOR REINY JABS** asked about the forfeiture of a parents' car

if a teenager violated the rule?

Colonel Craig Reap said it would not apply.

SENATOR DOHERTY asked for a definition of motor vehicle. Also, he wondered if a boat, tractor or snowmobile would be covered.

Mr. Funk said the definition was broad, but would not include tractors, snowmobiles or boats.

SENATOR DOHERTY asked about the public safety issue and wondered why they did not deal with all the high-powered machines.

Mr. Funk agreed that perhaps it should be done, but was certainly not written in this package as it was.

Closing by Sponsor:

SENATOR BISHOP closed on Senate Bills 237, 316 and 333 without further comment.

EXECUTIVE ACTION ON SB 350

Motion: SENATOR GROSFIELD MOVED THAT SB 350 DO PASS.

Discussion: CHAIRMAN CRIPPEN was concerned that the person would never get another job. He said he would probably vote for the bill anyway.

SENATOR SUE BARTLETT saw some irony in the bill. She said a bill in the last session regarding stalking, SENATOR VAN VALKENBURG opposed that because of increased workload and potential liability. What would happen if the department slipped up and failed to notify an employer?

Vote: The MOTION CARRIED on an oral vote, with SENATOR BARTLETT voting, "no."

EXECUTIVE ACTION ON SB 237

Motion: SENATOR BISHOP MOVED THAT SB 237 DO PASS.

Discussion: SENATOR NELSON said she was concerned about hunters. She had some sympathy with people not being able to have a drink when they are out in the country. She also expressed some concern over a football game, perhaps people would want a little schnapps and hot chocolate. The bill would require the people to sit outside. She suggested a change to "moving" vehicle.

SENATOR RIC HOLDEN said the countryside may become a dump ground for the empties people will feel forced to throw out. He said the bill would take from the idea of a responsible designated

driver. He said he would not vote for the bill.

**SENATOR JABS** said they could put their containers in the trunk, or into a container with a lid or a plastic bag tied shut. He thought they were overdramatizing the bill.

**SENATOR ESTRADA** was concerned about the transportation of open bottles, for instance, after a party.

**CHAIRMAN CRIPPEN** said he had asked about that. They said it would be a problem if the items were in the passenger compartment. In all cases, it would be at the discretion of the officer involved and the judge. There would be no trouble if it was in the trunk. The designated driver idea bothered him somewhat.

**SENATOR BISHOP** responded to **SENATOR NELSON**. He said the worst possible combination in his view was booze, a vehicle and guns.

**SENATOR NELSON** said she did not condone getting drunk. She assumed that people took a swig of something, not necessarily to excess.

**SENATOR HALLIGAN** said they were not plowing new ground in the sense that the State of Washington has had this law in effect for a while. He suggested contacting their prosecutor's office to see if that had any experience on the questions of pick-up passenger areas and freight areas, etc.

**SENATOR BAER** said the bill was not that far-reaching. He said that most hunters were not on the highway, but rather out in the field, where the law would not apply.

**SENATOR NELSON** asked if the game warden would have jurisdiction under this law if people were drinking, sitting in their cars out in the field.

**SENATOR BISHOP** said the rule was codified in Section 2, Title 61. He read, "in a motor vehicle on any ways of this state open to the public."

**Mr. Funk** said that he thought the bill should also say that.

**Valencia Lane** explained how it could be written: Page 1, Line 13, following, "unlawful," insert, "on a way of the state open to the public." She was unsure if they wanted to put it in the title or not.

**Motion/Vote:** **SENATOR HALLIGAN** MOVED TO ACCEPT THE AMENDMENT AS EXPLAINED BY **VALENCIA LANE**. The MOTION CARRIED UNANIMOUSLY on an oral vote.

**Motion/Vote:** **SENATOR GROSFIELD** MOVED THAT ON LINE 12 AND 13, THE WORDS BE STRUCK, "EXCEPT FOR WITHIN THE BOUNDARY ON AN



INCORPORATED CITY OR TOWN."

Discussion: SENATOR HALLIGAN said at the Task Force, it was decided not to take on the local governments on this ruling. Missoula, for instance, has a very strictly-enforced open container law.

SENATOR GROSFIELD said it would apply to that situation. It would only apply to vehicles. If Augusta wanted to exempt the streets of town for rodeo day, they could still do that. They just could not get by with that in a vehicle.

SENATOR BARTLETT asked if she was in the city with no open container law, this would be the only law covering that situation. Would she be able to escape being charged if she pulled into the parking lot of a shopping center, on private ground.

SENATOR HALLIGAN said the parking lot at K-Mart is a public way of this state. "Public ways" are not only public roadways.

CHAIRMAN CRIPPEN said a home driveway would be included only if an officer observed you drinking and you pulled into the driveway.

SENATOR GROSFIELD said a public way would include a football game, a rodeo, or an outdoor movie from the vehicle.

SENATOR HALLIGAN said a person would not have to be operating the motor vehicle for the rule to apply.

Vote: The MOTION FAILED on an oral vote.

Discussion: SENATOR GROSFIELD was troubled by the designated driver business. He posed a problem wherein they were at a rodeo, he was the driver, was not drinking, did not intend to. Maybe his friends were drinking although the vehicle was not moving. When they moved, all the empties were disposed of.

CHAIRMAN CRIPPEN said it would be the same with anyone drinking in the car.

SENATOR GROSFIELD suggested inserting the word, "moving" vehicle.

SENATOR HALLIGAN said that the people would not be in violation if they were outside the car.

SENATORS NELSON AND HALLIGAN described cold conditions at the functions in their areas. People would not be outside the car, but inside.

SENATOR HALLIGAN asked about making the rule apply to only the roadways of the state.

**Mr. Funk** said they would significantly be changing the bill. He guessed they were making a statement on open containers and vehicles, saying some were O.K. and some were not. From a law enforcement standpoint, he could not imagine it serving the purpose intended. He said in a kegger situation, pulling up on juveniles when they are not in their cars, would be lost to law enforcement in that case.

**CHAIRMAN CRIPPEN** said the car did not move on its own. It got there and will get back somehow. The whole crux is to prevent people from driving while drinking, he said.

**SENATOR NELSON** said the blood alcohol level may still be under the limit. If the driver wasn't drunk, it would not be a problem.

**Joe Robert** responded to the conversations by saying that the stumbling blocks relate to the vehicle that isn't in motion. He would be inclined to go to the moving vehicle situation, which would be a greatest concern, probably 90 per cent of the violations. He said the Task Force was not trying to address the goose hunter and the rodeo scenes.

**CHAIRMAN CRIPPEN** asked for a vote to see the direction of the committee on moving vehicles or stopped vehicles. Eight members favored making the rule apply to moving vehicles. He asked for a clarification of the amendment.

**Valencia Lane** explained the amendment by adding "moving," after motor vehicle in each Subsection, "being operated on a way open to the public."

**SENATOR HALLIGAN** asked **Mr. Funk** about operating a motor vehicle. If a person was sitting in the car, but not moving, he thought the judge had declared him to be the driver.

**Mr. Funk** said the terminology used in court cases would be, "in actual physical control."

**Colonel Reap** told the committee that the language used in accident investigation procedures was "in transport." He suggested that language rather than "moving vehicle," because it covered vehicles idling at a intersection or parked on driveway accesses waiting to come on to the road. It would eliminate the problem in the parking lot or in a field because if that car were involved in an accident, it would be considered a "parked" car.

**SENATOR GROSFIELD** asked if he were parked at the football game and someone in the back seat was drinking a beer, would that be, "in transport," or not.

**Colonel Reap** said it would be considered, "in transport" if the engine was running.

**Motion:** SENATOR GROSFIELD MOVED TO INSERT THE WORD, "MOVING" BEFORE "MOTOR VEHICLE" ON LINE 14 AND 15.

**Discussion:** Mr. Funk said it would be pretty on paper but would not work for the officers on the street if the phrase would not have some kind of defined meaning. Could they have a sip at the red light, he asked?

SENATOR JABS said they were trying to discourage drunk driving. If they would let a teenager sit in the K-Mart parking lot and drink like mad, it would seem to defeat the purpose and send the wrong signals to everyone.

SENATOR HOLDEN said they would be in violation because they were minors.

SENATOR HALLIGAN said the bill would be in jeopardy if they did not put "moving" into the language.

Mr. Hanser commented on what the Task Force intended. He said the message was for people not to operate a vehicle while drinking. The main idea was simply to reduce the hazard. He said they were trying to change the Montana attitude that you can't hunt unless you drink. He hoped not to be hunting next to one of the drinkers. He said people did not want to fish without drinking or go to the basketball game without drinking. The message was that people cannot do that in their car. He strongly supported the language, "in transport." It would take into account the vehicle either in motion or one that is an immediate problem because it will become in motion because of the circumstances surrounding it.

Dennis Paxinos, Yellowstone County Attorney, also urged the same language. Even if a patrolman cites an adult for drinking at a football game, a prosecutor would be loathe to press that case. The intent of the law would be drunk driving and some discretion should be given to prosecutors for good faith.

**Motion/Vote:** SENATOR BAER MADE A SUBSTITUTE MOTION TO INSERT THE WORDS, "IN TRANSPORT," RATHER THAN, "MOVING." The MOTION CARRIED on a roll call vote with 6 members voting aye and 5 members voting no.

**Motion:** SENATOR BISHOP MOVED THAT SB 237 DO PASS AS AMENDED. The MOTION CARRIED on a roll call vote with 7 members voting for the bill and 4 members voting against the measure.

**EXECUTIVE ACTION ON SB 316**

**Discussion:** CHAIRMAN CRIPPEN said that the only test that could be given would be a breath test under this bill.

**Motion:** SENATOR BISHOP MOVED THAT SB 316 DO PASS.

**Discussion:** SENATOR DOHERTY said that the fiscal note said it could have a significant impact on the counties. This bill is a very large, unfunded mandate to the counties to provide for pre-release centers, for new vehicles, etc., and they were not providing the funding. However, he said he was in favor of it.

CHAIRMAN CRIPPEN said they could hold off on the second reading on the floor. This is a preliminary step, he said. .

SENATOR BARTLETT asked about the breathalyzer equipment. She wondered if the de-earmarking bill took out the currently earmarked statutory appropriation put in the previous session?

Al Goke stated that last session an amendment was made to the DUI reinstatement bill which had a \$100 reinstatement, to provide that \$50 would go the general fund, and the other \$50 would go to the DUI Task Force. There is a remainder because all counties do not have DUI Task Forces. Up to \$50,000 of the remainder goes to the State Crime Lab to help with the maintenance and purchase of alcohol testing devices. He said \$100,000 was available each year for equipment and \$200,000 per year would go to the DUI Task Force. He reminded the committee that each community would probably give a good deal of support to make the bill work.

Mr. Paxinos had introduced a bill saying that for every DUI conviction, a \$15 surcharge would be assessed to come back to the arresting law enforcement agency. That money would also be used for DUI equipment.

SENATOR BARTLETT said last session they had gone through recognizing there is a breaking point on fine, at which they have no effect on behavior.

Mr. Paxinos said it was not intended to break anyone, but to provide an extra \$15 to buy video equipment to detect DUI. It would be effective in reducing the cost of going to trial, he said.

SENATOR GROSFIELD said if the program were de-earmarked, it would not make a difference. The local DUI forces would not have a problem getting their funds before other activities.

SENATOR BARTLETT said that there were problems in the past, which is why they came in requesting earmarked funds for alcohol testing equipment.

SENATOR HOLDEN asked about Page 4, Line 24. He wondered if low income people would be hit pretty hard in taking an asset, such as a car, on second offense.

SENATOR DOHERTY said that the language on hardship would provide an out for an innocent owner.

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On the DUI issue, he said, whether or not a person had money,

they would have to pay the piper on a second offense.

**CHAIRMAN CRIPPEN** asked if **SENATOR HOLDEN** meant that those who can afford it will suffer the consequences of their actions, but those who cannot afford it ought not to be able to suffer the consequences of their actions?

**SENATOR HOLDEN** said it would enter in, certainly.

**CHAIRMAN CRIPPEN** raised the question if a low income person should be given another chance to hit somebody on the highway.

**SENATOR HOLDEN** said they intended to take a lethal weapon away from a drunk driver. But if they confiscated cars from median-income people, would they in some way be increasing welfare rolls by rendering people unable to work? Would they lose their jobs?

**SENATOR JABS** said there were car pools, friends, neighbors and horses.

**SENATOR BAER** said that after the first couple of offenders are punished and into the newspapers, this could be one of the most powerful deterrents for second offenders.

**SENATOR HALLIGAN** said the forfeiture of the car would apply only to second offense of driving while suspended, not merely second offense DUI.

**CHAIRMAN CRIPPEN** said by then their insurance probably had been lost as well. He said it was poor public policy to have those people driving anyway.

**Vote:** The MOTION THAT SB 316 DO PASS CARRIED UNANIMOUSLY on an oral vote.

EXECUTIVE ACTION ON SB 333

**Motion/Vote:** **SENATOR BISHOP** MOVED THAT SB 333 DO PASS. The MOTION CARRIED UNANIMOUSLY on an oral vote.

EXECUTIVE ACTION ON SB 212

**Discussion:** **SENATOR HALLIGAN** asked how the committee felt about an amendment to provide a notice to the non-party by regular mail when the answer is filed that they had been mentioned in a lawsuit. He thought the people would like to know, even though they cannot intervene, and they could contact the plaintiff to defend themselves. He said **Mr. Alke** had no objections.

EXECUTIVE ACTION ON SB 206

Discussion: CHAIRMAN CRIPPEN said SB 206 was on the table. He said he would like to take it off the table, leave the portion concerning video taping, and eliminate the rest. The sponsor was agreeable, he said.

SENATOR HALLIGAN said his concern with the video portion was that it said no statement could be used regarding the child unless it was videotaped. He said that if a gym teacher saw an obvious hand mark and inquired of the child what happened, and the child said that a person beat them, that statement would be inadmissible under that portion of the bill. The sponsor said they wanted the videotaping to be done during the formal interviewing of the child. He thought it was done now. He said that if a legitimate statement about abuse was made by a neighbor, it would not be allowed. He agreed with the idea that a child should not be coached.

SENATOR BARTLETT said there is some provision for videotaping in existing statute.

Motion/Vote: CHAIRMAN CRIPPEN MOVED THAT SB 206 BE TAKEN FROM THE TABLE. The MOTION CARRIED on an oral vote with SENATORS BARTLETT AND DOHERTY voting no.

#### EXECUTIVE ACTION ON SJR 7

Discussion: SENATOR DOHERTY said he had looked at the proposed amendment and it strikes all the language in the whereas clauses which he thought were essential. He did not have a problem with an amendment that would include a performance audit of automated information systems in the Clerk of Court Law Library and Water Court. This amendment is to look at the money they have spent and how much more they want and if they are doing a good job. He had information from Hill County that they had computers that could not talk to one another. This may be an area to privatize.

Motion/Vote: SENATOR DOHERTY MOVED THAT SJR 7 BE AMENDED ON PAGE 1 TO INCLUDE A PERFORMANCE AUDIT OF AUTOMATED INFORMATION SYSTEMS IN THE CLERK OF COURT LAW LIBRARY AND THE WATER COURT OFFICES, TO BE ADDED TO THE WHEREAS CLAUSES ON LINE 26.

Discussion: CHAIRMAN CRIPPEN said he had a problem with that because it leaves some of the language and there was testimony that the 10 FTE's and one million dollars was not correct. He did not know if the \$900,000 is correct. He said they were getting the audit and the language would not change that.

SENATOR DOHERTY said there was a good reason why he suggested striking the language. He got it from legislative council. They told him about the proposals and the one million dollars. They also came up with the money already spent. Those were hard figures. The reason they don't want it was because of the FTE's

spending that amount of money. He wanted the clear light of day. He said maybe it was the only way to get the study.

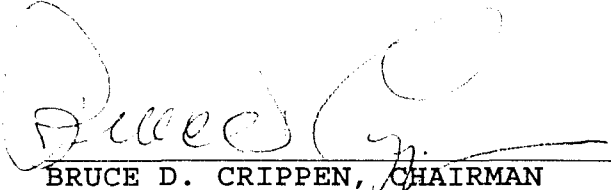
**CHAIRMAN CRIPPEN** said that the stricken language would be visible to all on the floor if the resolution should pass. He said he should have an ample opportunity to make his point.

**Vote:** The **MOTION CARRIED** on an oral vote. **SENATORS CRIPPEN, ESTRADA AND BAER** voted no.

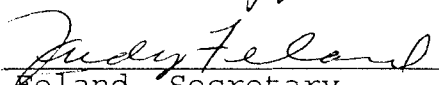
**Motion:Vote:** **SENATOR DOHERTY** MOVED THAT **SJR 7** DO PASS AS **AMENDED**. The **MOTION CARRIED** on an oral vote with 7 members voting aye and **SENATORS CRIPPEN, BISHOP, ESTRADA AND BAER** voting no.

ADJOURNMENT

Adjournment: CHAIRMAN BRUCE CRIPPEN adjourned the hearing at  
11:35 a.m.



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BRUCE D. CRIPPEN, CHAIRMAN



\_\_\_\_\_  
Judy Feland, Secretary

BDCjf



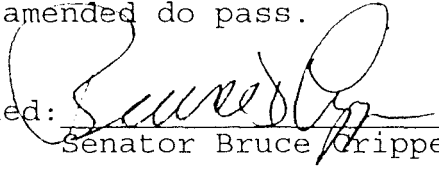


SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 15, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SJR 7 (first reading copy -- white), respectfully report that SJR 7 be amended as follows and as so amended do pass.

Signed:   
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 6.

Following: "OFFICE"

Insert: "AND OF THE AUTOMATED INFORMATION SYSTEMS OF THE CLERK OF  
THE SUPREME COURT, THE LAW LIBRARY, AND THE WATER COURT"

2. Page 1, line 27.

Following: line 26

Insert: "BE IT FURTHER RESOLVED, that the Legislative Auditor  
conduct a performance audit of the automated information  
systems of the Clerk of the Supreme Court, the Law Library,  
and the Water Court."

3. Page 1, line 27.

Strike: "audit"

Insert: "audits"

-END-



Amd. Coord.  
Sec. of Senate

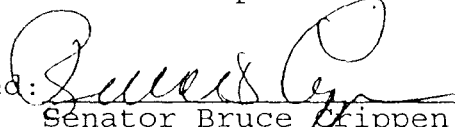
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 15, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 237 (first reading copy -- white), respectfully report that SB 237 be amended as follows and as so amended do pass.

Signed:   
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 6.

Following: "BEVERAGES"

Strike: "IN A MOTOR VEHICLE"

2. Title, line 8.

Following: "VEHICLE"

Insert: "IN TRANSPORT ON A WAY OF THE STATE OPEN TO THE PUBLIC"

3. Page 1, line 13.

Following: "unlawful"

Insert: "on a way of the state open to the public"

4. Page 1, line 14.

Following: "vehicle"

Insert: "in transport"

5. Page 1, line 15.

Following: "vehicle"

Insert: "in transport"

6. Page 1, line 19.

Following: second "vehicle"

Insert: "in transport"

-END-



Amd. Coord.  
Sec. of Senate

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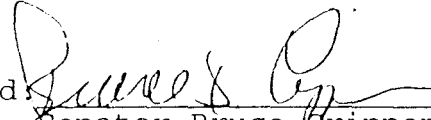
SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 15, 1995


MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 333 (first reading copy -- white), respectfully report that SB 333 do pass.

Signed



Senator Bruce Crippen, Chair

 Amd. Coord.  
Sec. of Senate

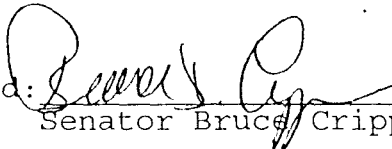
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 15, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 316 (first reading copy -- white), respectfully report that SB 316 do pass.

Signed:   
Senator Bruce Crippen, Chair

 Amd. Coord.  
Sec. of Senate

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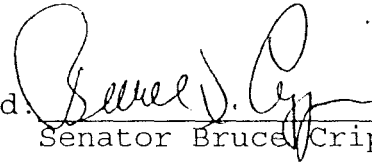
SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 15, 1995


MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 350 (first reading copy -- white), respectfully report that SB 350 do pass.


Signed.



Senator Bruce Crippen, Chair



Amd. Coord.

 Sec. of Senate

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MONTANA SENATE  
1995 LEGISLATURE  
JUDICIARY COMMITTEE  
ROLL CALL VOTE

DATE 2-15-95 BILL NO. SB 237 NUMBER 1

MOTION: Sen. BAER MOVED A SUBSTITUTE MOTION TO  
INSERT THE WORDS, "IN TRANSPORT" ON LINES 14  
& 15.

| NAME                     | AYE | NO |
|--------------------------|-----|----|
| BRUCE CRIPPEN, CHAIRMAN  | /   |    |
| LARRY BAER               | /   |    |
| SUE BARTLETT             |     | /  |
| AL BISHOP, VICE CHAIRMAN | /   |    |
| STEVE DOHERTY            |     | /  |
| SHARON ESTRADA           | /   |    |
| LORENTS GROSFIELD        |     | /  |
| MIKE HALLIGAN            | /   |    |
| RIC HOLDEN               |     | /  |
| REINY JABS               | /   |    |
| LINDA NELSON             |     | /  |
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SEN:1995  
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PASSED - TO AMEND -

MONTANA SENATE  
1995 LEGISLATURE  
JUDICIARY COMMITTEE  
ROLL CALL VOTE

DATE 2-15-95 BILL NO. SB 237 NUMBER 2

MOTION: Sen. Bishop Moved SB 237 Do Pass

Sen. Halligan moved - all aye - add "all wrap.... oral."

Sen. Grosfield - moved. - inc. all cities + towns - f.a. led - oral vote

Sen. Gros - " - Sub - Baer - "IN TRANSPORT - ~~inc. all~~ 6-5

| NAME                     | AYE | NO |
|--------------------------|-----|----|
| BRUCE CRIPPEN, CHAIRMAN  | /   |    |
| LARRY BAER               | /   |    |
| SUE BARTLETT             |     | /  |
| AL BISHOP, VICE CHAIRMAN | /   |    |
| STEVE DOHERTY            | /   |    |
| SHARON ESTRADA           | /   |    |
| LORENTS GROSFIELD        |     | /  |
| MIKE HALLIGAN            | /   |    |
| RIC HOLDEN               |     | /  |
| REINY JABS               | /   |    |
| LINDA NELSON             |     | /  |
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SEN:1995

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7 4

DO PASS AA



I would like to start out by saying that I am not here to tell you all not to drink. We like to go out and have a few drinks now and then. We listen to the band and meet with friends, but we walk or else one of us doesn't drink.

I am here to ask you to support Senate Bills 237, 316, and 333.

As you know all three of these Bills are designed to strengthen and eliminate loopholes in existing D.U.I. laws.

A good example would be the use of hand held Breathalizers for Policemen, also I agree with the .02 Blood Alcohol Level for minors. Montana is way behind the times without an open container law. I especially agree with the Courts being able to use all previous D.U.I. convictions instead of erasing them after 5 years.

In Lake County alone, last summer we had five deaths caused by Drunk Drivers. Two of the deaths were very close to us, my daughter Jana and her friend Anita Myers. They were coming home from the Rodeo in Kalispell at about 10:30 P.M.

When a Drunk Driver went to pass over a double-double yellow line. They didn't have a chance! He hit them head on going between 80 and 90 miles per hour. Anita died at the scene, Jana was unconscious and was flown by helicopter into Kalispell.

Unless you are a parent and have received one of those Midnight phone calls you will never know the fear, pain, and anguish that grips your heart.

They didn't tell us much over the phone, so the one hour drive to Kalispell was hell. Your first thought is that this can't be happening to us. We are supposed to be leaving on vacation in the morning, everything is packed and ready to go.

When we got to Kalispell and the Doctors finally came in to tell what was happening, He said the Cat Scan showed that her major organs were O.K., There were no broken bones but she had sustained major head injuries from the sudden impact even though Jana was wearing her seat belt.

The Doctor told us we could go in and see her in a minute. Part of me wanted to run right in there, but part of me didn't. I didn't want to see her hooked up to all those machines, lying there so helpless. The doctor then told us we should be with her because it might be the last time we see her alive. We went in, I hadn't cried much yet but seeing her Unconscious like that tore my heart out. I managed to tell her I loved her and that she was strong and could beat this. Later we broke down. The next two days were a living Hell. Jana Died August 21<sup>st</sup> because The Doctor that was in charge of that same emergency room that treated her decided to drink excessive amounts of alcohol and drive his truck!

John Campbell  
John Campbell

Nancy K. H Jovin Ravalli County DUI Task Force Coordinator  
 402 N.2nd  
 Hamilton MT. 59840

1-11-95  
 SB 237, 316, 333

SB 237- Open Container Law

My feeling on this bill and the ones to follow are long overdue. Montana seems to have "The Good ole Boy" attitude. "Well maybe Joe has a drink now and then." Well that's fine for Joe as long as he does not get behind the wheel of a automobile. Drinking and driving should be thought of as a CRIME..not a social problem. Being impaired and driving is a crime. We are losing our neighbors, friends, and families because of this casual attitude. Let's show the people of this stat that we care. We care enough to be tough on drinking and driving. That means that it will be treated like the crime that it is, not just someboby's recreational time turned bad. This is a crime and should be treated as such. Joe can wait until he is out of his car to have a cold one. With the exceptions, (i.e. chartered, for-hire vehicles, motorhomes and RV's.) Joe may still enjoy recreation, but not while endangering others.

SB 316 Section 1

I am in agreement with the preliminary testing to help determine 'probable cause" My questions come in Section 1 Subsection 8. that requires the department to certify both the devices and the operators before preliminary tests may be conducted. First, do we have such certified devices and the operators. Before we pass Laws that will require these things maybe we should investgate that. Second how often will devices and officers need to be recertified? Are we putting the horse before the cart? As I have said I am in favor of this as soon as these questions have been answered and adhered to.

SB 36 sec. 2

I am adamantly for this section of this bill. Youth and alcohol do not mix. That's why it is already a law. They drink, they drive, they injure themselves and others if they are lucky, or they die. They lack experience just driving, let alone add a drink or two. This part of the bill directly relates to SB 237, The open container law. the place where youth drink most frequently is ina car. Both these two bills are a great deterant to our drinking and driving problems.

SB 36 sec. 3

In 1993, the legislature provided for the forfeiture of vehicles driven by people who are three-time offenders. When it comes time to enforce this law the offender no longer owns a car. This law is a must if we are realistically going to enforce a law already in place. Subsection 3 Making a transfer in violation of the section a felony offense with hefty fines and jail time should be significant enough to stop this practice.

SB 316 sec. 4

Great.. Lets eliminate the possibility of deferred prosecution. The victums of these offenders have lost their choice, why should offenders have more rights the their victums?

SB 316 Sec. 5

As there is no deterrent to not drive while a person's driver's license is suspended or revoked, we have got to get stiffer laws that would stop the problem we have now with multiple offenders. In Ravalli County Jail right now we have three multiple DUI offenders. They don't seem to mind our penalties as they are now. However our law enforcement, and our judges are reluctant, to say the least, about enforcing this law already. This section also states to "render inoperable" and that will be more easily enforced. Subsection 5 Joint ownership is also addressed in regard to seizures and is not a bar to such actions, with an "out" for the truly innocent joint owner. Similar language is already found in the existing forfeiture procedure. Subsection 7 is again a must. Suspending or deferred penalties are used to give the multiple offender another chance to kill or injure others, costing all of us more than any of us can imagine. Why make a law if it is not going to be enforced?

SB 316 Sec. 6

This is simple to me. Finally something that is really logical. Why would a person not refuse if the penalty is only 90 days compared to 6 months? They can plead not guilty, have their day in Justice Court, then appeal and have another day in District Court. This refusal thing has gotten way out of hand.

SB 316 Sec. 7

Consistency is not only important but easy to practice. Let's amend the generic forfeiture provision to be consistent with section 5 and be subject to the same existing procedures.

Sec. 8 Multiple offenders are truly our biggest problem. When it comes to risking lives. Remember driving while impaired is a crime. Let's make the laws show we are serious about this problem, not social but criminal. DUI's are a violent crime. Three strikes and you are out. Subsection 6 Forth time offenders, whether or not it happened 5 years or ten years apart should be a felony offense. Once the offender has shown society that they refuse to take DUI laws seriously they are a dangerous offender, and not safe to society. Subsection D Why did 1991 legislation change or fix something that was not broken? Slow year I guess. No deferred sentences.

SB 316 Sec. 9

There really is no reason why the department should destroy such criminal records. The information is not publicly available but is still to prosecutors and the courts. It is confidential criminal justice information. If a person has a track record that is going to put us all in danger, shouldn't we keep track? Subsection 8 has two convictions that are almost identical. The only difference being, alcohol concentration level from testing is generally present in excessive concentration offenses. They are identical offenses and should be treated as such.

SB 333 Subsection 4 section 2

Treatment is critical in dealing with DUI offenders. A judge is not certified to make recommendations concerning treatment. In my opinion, drunk drivers are about the best liars and cons around.

EXHIBIT 2

DATE 2-15-95

SB 237, 316, 333

SB333 cont.

Councilors can determine the best recommendations. Also in section 4 if, on the second or subsequent offence two councilors can't agree on treatment, a judge could, after seeing all the evidence, make recommendat

SB 333 Sec 1 & 3

It states that probationary drivers licenses will not be issued until the course of treatment is completed. This only makes sense to me. Why reward an offender and give them back the privilage to drive if they are not willing to complete treatment? What would the incentive be? Why even take away the privilage in the first place?

This bill, in the way that it is <sup>written</sup> seems to treat excessive alcohol concentration sentencing differently. What do prosecutors know about chemical dependancy that qualifies them to recommand different treatment? In my experience an alcoholic is alcholic and treatment does work in many cases. That is our priäry purpose isn't it? To stop drinking and driving in return we have safe highways, and the huge losses that we are experiencing now to decline?

SENATE JUDICIARY COMMITTEE  
CASE NO. 3  
DATE 2-15-91  
FILE NO. SB 333

SB 333 Testimony

This bill introduced by Senator Bishop is supported by the Department of Corrections and Human Services (DCHS) Alcohol and Drug abuse Division (ADAD).

Requiring 1st time offenders, **who are chemically dependent, to go to treatment**, will reduce the number of repeat DUI offenders by intervening in there lives earlier. If we reduce the number of repeat offenders we should reduce the loss of life and property damage and play a part in reducing the over crowding in jails as repeat offenders have longer jail times.

DCHS/ADAD is the agency responsible under 53-24-208 for approving the facilities eligible to provide the DUI alcohol information course. ADAD also currently develops the diagnosis and placement rules (standards) **referred to in this bill (61-8-714 (4))**, all certified counselors would be required to follow.

The department is also the agency given legislative responsibility for certifying chemical dependency counselors who determine if the 1st time offender is chemical dependent.

Passage of this bill will reinforce the message that you don't drink and drive.

Respectfully submitted



Darryl L. Bruno, Administrator  
Alcohol and Drug Abuse Division  
Department of Corrections and Human Services

Gallatin County

## DUI TASK FORCE

104 East Main—Room 313 First Bank Building  
Bozeman, Montana 59715  
406-585-1492

Education • Awareness • Enforcement

MONTANA HISTORICAL SOCIETY  
BOOK NO. 4  
DATE 2-15-95  
FILE NO. SB 237, 316, 333

**Exhibit No. 4 includes 5 pages of signatures. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694**

February 14, 1995

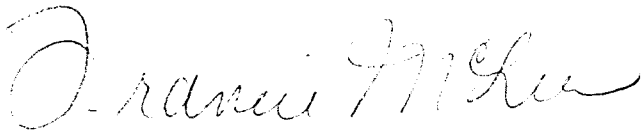
Judiciary Committee  
Montana Senate

To Whom It May Concern,

The Gallatin County DUI Task Force would like to express its strong support of Senate Bills 237, 316 and 333. Senate Bill 316 in particular is vital to the effort to make Montana roads and highways safe from impaired drivers.

During the Montana Winter Fair held in Bozeman in January of this year, our Task Force did a week-long DUI education program for fair patrons. We provided information and rationale for the legislation contained in Senate Bills 237, 316 and 333. The support for strong DUI laws and strong DUI enforcement was overwhelming. Attached to this letter are sheets containing names and addresses of registered voters who wanted legislators to know that impaired drivers must be kept off Montana roads.

People are particularly outraged that multiple DUI offenders are still driving and killing innocent people. Impaired drivers should be held responsible for their actions. Please support this effort for more effective DUI laws.



Francie McLean, Coordinator  
Gallatin County DUI Task Force



# DUI LEGISLATION TESTIMONY

SENATE JOURNAL

Submitted By: Tom Huddleston  
Representing: Helena City Commission  
Lewis & Clark DUI Task Force

SENATE NO. 5  
DATE 2-15-95  
BILL NO. 50 237, 316, 333

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE. I'M HERE TODAY TO SPEAK IN FAVOR OF THE DUI BILLS AND ALL LEGISLATION THAT STRENGTHENS ENFORCEMENT AND DENOTES APPROPRIATE CONSEQUENCES FOR DUI INFRACTIONS. I COME BEFORE YOU ON BEHALF OF THE HELENA CITY COMMISSION AND THE LEWIS AND CLARK DUI TASK FORCE. I'VE BEEN A MEMBER OF THE CITY COMMISSION FOR SEVEN YEARS AND CHAIRMAN OF THE COUNTY TASK FORCE FOR YEARS.

IT SHOULD BE OBVIOUS WHY I WOULD ENCOURAGE ENFORCEMENT AND CONSEQUENCES FOR REPEATED CONVICTIONS OF DUI LAWS. DRUNK DRIVING IS A SERIOUS PROBLEM IN OUR STATE AND DRUNK DRIVERS KILL AND MAIM. REPEAT OFFENDERS IGNORE THE IMPOSED CONSEQUENCES AND BECOME UNINSURED AND UNLICENSED, BUT REMAIN DRIVERS WHO DRINK. TOO MANY OF US CONTINUE TO SEE THIS AS A SOCIAL PROBLEM AND SHAKE OUR HEADS AT THOSE WHO CONTINUE TO CALL FOR MORE AND STIFFER LAWS. AFTER ALL, WE'VE PROBABLY ALL DONE AT LEAST ONCE. ...THERE BUT FOR THE GRACE OF GOD, GO I.

I'D LIKE TO TALK TO YOU ABOUT THAT NOTION. IT'S ONE THAT I SHARED FOR A LONG TIME. I WOULD LIKE TO PROPOSE THAT IF YOU ENACT THIS BILL AND OTHERS LIKE IT, YOU WILL NOT ONLY BE SERVING OUR COMMUNITIES, YOU WILL ALSO SERVE THE OFFENDER. I AM AN ALCOHOLIC AND WAS A PROBLEM DRINKER FOR FIFTEEN YEARS. DURING THAT TIME I DROVE AND DRANK. AFTER LONG NIGHTS AT EITHER PARTIES OR THE BARS. EVEN ON TRIPS ACROSS THE STATE. THERE, BUT FOR THE GRACE OF GOD...NO, I DIDN'T HAVE AN ACCIDENT WHILE DRIVING THAT HURT ANYONE. BUT I DID PARK ON MY SIDEWALK. RAN INTO FENCES. LEFT MY ENGINE RUNNING WHILE I SLEPT IN THE CAR. AND EVEN JOKED ABOUT IT. I WOULD OFTEN RECALL ABOUT HOW "OLE BETSY" KNEW THE WAY HOME. ALL I HAD TO DO WAS PUT THE KEY IN, START HER UP, AND SHE DID THE REST. THEN WE'D ALL CHUCKLE.

THREE YEARS AGO, I GOT LUCKY. I COMMITTED ANOTHER KIND OF STUPID DRUNK TRICK, BROKE THE LAW AND HAD THE CONSEQUENCES ENFORCED. FOR THE FIRST TIME, SOCIETY DIDN'T ENABLE ME TO CONTINUE MY FORM OF SOCIAL BEHAVIOR. INSTEAD, THEY SAID "CLEAN UP OR GO AWAY." THERE WERE NO EARS TO HEAR MY LAME EXCUSES OR PLEAS FOR MORE TIME. WELL, I WENT AWAY AND CLEANED UP. I GOT THE HELP I NEEDED.

TODAY, I START ANOTHER CHAPTER IN MY FOURTH YEAR OF RECOVERY. AND MY LIFE IS FULL. I HAVE A LOVELY FAMILY AND A BRAND NEW GRANDDAUGHTER. I LIVE IN A GREAT COMMUNITY AND STATE AND I CONTRIBUTE. I REDISCOVERED THAT THE WEEK HAS SEVEN DAYS AND I ENJOY THEM ALL. AND IN EACH OF THEM, I AM IN CONTROL OF EVERYTHING THAT I DO OR USE.

ON BEHALF OF ALL OF MY BROTHERS AND SISTERS WHO ARE NOT IN CONTROL, PLEASE DO NOT ENABLE THEM ANY LONGER. SAVE THEIR LIVES AND YOURS. PLEASE MAKE THE CONSEQUENCES MEANINGFUL FOR RECOVERY FOR THEM ALSO.

THANK YOU.

DATE 2-15-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB237 SB316 SB 333 SB350

< ■ > PLEASE PRINT < ■ >

Check One

| Name                 | Representing                   | Bill No.         | Support | Oppose |
|----------------------|--------------------------------|------------------|---------|--------|
| CLARENCE BRAZIL      |                                | SB237            | X       |        |
| CLARENCE BRAZIL      |                                | SB316            | X       |        |
| Albert E. Baker      | High. Traffic Safety           | SB 333, 237, 316 | X       |        |
| Manne Stinkley       | Yellow DUI Task Force          | 237, 316, 333    | ✓       |        |
| Jerry Archer         | DUI Task Force Billings Police | 237, 316, 333    | ✓       |        |
| Harold Hansen        | Heart DUI Task Force           | 237, 316, 333    | ✓       |        |
| JOE ROBERTS          | DUI Prevention Council         | 237, 316, 333    | ✓       |        |
| John & Jill Campbell | SELF                           | 237, 316, 333    | ✓       |        |
| Peggy S. Wheeler     | SELF                           | 237, 316, 333    | ✓       |        |
| Chang Reap           | MHP                            | 11               | ✓       |        |
| Mark Gady            | Billings Police DUI Task Force | 237, 316, 333    | ✓       |        |
| Nancy K. Jovin       | Ravalli County DUI Task Force  | 237, 316, 333    | ✓       |        |
| DAIRY/L BRILL        | DLHS / ADAD Sec                | 237, 316, 333    | ✓       |        |
| GEORGE BONINI        | MTEA                           | 237              | ✓       |        |

Wm. J. WARE, Chief of Police Mt. Assn. of Chiefs of Police 237, 316, 333 ✓  
VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-15-95

SENATE COMMITTEE ON

Judiciary

BILLS BEING HEARD TODAY:

SB 237 SB 316

SB 333

SB 350

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PLEASE PRINT

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Check One

| Name              | Representing                    | Bill No.            | Support | Oppose |
|-------------------|---------------------------------|---------------------|---------|--------|
| STEVE E. RANDOLPH | ZARPHRIS<br>REST                |                     | X       |        |
| Bob Campbell      | Sen.                            | 237                 |         | X      |
| Kathy McGowan     | CDPM, MSPDA                     | 316                 |         |        |
| Kathy McGowan     | " "                             | 333                 |         |        |
| Mike Ryzner       | Boyd andrew CDC                 | 333                 | X       |        |
| Troy McDev        | Mont Police Protective<br>Assoc | 337<br>316<br>333   | ✓       |        |
| Francie McLean    | Gallatin Co. DUI                | 337<br>316<br>333   | X       |        |
| Dennis Paxinos    | Yllustr Co Atty                 | 333<br>DUI<br>Bills | X       |        |
| Tom Huddleston    | City of Helena                  | DUI                 | ✓       |        |
|                   |                                 |                     |         |        |
|                   |                                 |                     |         |        |
|                   |                                 |                     |         |        |
|                   |                                 |                     |         |        |
|                   |                                 |                     |         |        |
|                   |                                 |                     |         |        |

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY